

- 1 (b) Appraisal reports;
- 2 (c) Settlement statements;
- 3 (d) Supporting personal documentation for loan applications, including:
 - 4 1. Form W-2 or other earnings or income statements;
 - 5 2. Verifications of rent, income, and employment;
 - 6 3. Bank statements;
 - 7 4. Tax returns; and
 - 8 5. Payroll stubs;
- 9 (e) Any required mortgage-related disclosures; and
- 10 (f) Any other document required as a part of, or necessary to, the mortgage
- 11 lending process;
- 12 (18) "Mortgage loan" means any loan primarily for personal, family, or household use
- 13 that is secured by a mortgage, deed of trust, or other equivalent consensual security
- 14 interest on residential real property or any loan primarily for personal, family, or
- 15 household use that is secured by collateral that has a mortgage lien interest in
- 16 residential real property;
- 17 (19) "Mortgage loan broker" means any person who for compensation or gain, or in the
- 18 expectation of compensation or other gain, received directly or indirectly, serves as
- 19 an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself
- 20 out as being able to do so;
- 21 (20) "Mortgage loan company" means any person who directly or indirectly:
 - 22 (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able
 - 23 to do so; or
 - 24 (b) Services mortgage loans, or holds oneself out as being able to do so;
- 25 (21) "Mortgage loan originator" means a natural person who, in exchange for
- 26 compensation or gain or in the expectation of compensation or gain:
 - 27 (a) Performs any one (1) or more of the following acts in the mortgage lending

1 process:

- 2 1. Solicits, places, negotiates, or offers to make a mortgage loan;
- 3 2. Obtains personal and financial information from a borrower or
- 4 prospective borrower;
- 5 3. Assists a borrower or prospective borrower with the preparation of a
- 6 mortgage loan or related documents;
- 7 4. Explains, recommends, discusses, negotiates, or quotes rates, terms, and
- 8 conditions of a mortgage loan with a borrower or prospective borrower,
- 9 whether or not the borrower or prospective borrower makes or
- 10 completes an application;
- 11 5. Explains any term or aspect of any disclosure or agreement given at or
- 12 after the time a mortgage loan application is received; or
- 13 6. Takes a residential mortgage loan application; or
- 14 (b) Is an independent contractor engaging in the mortgage lending process as a
- 15 mortgage loan processor;
- 16 (22) "Mortgage loan processor" means a natural person who performs only clerical or
- 17 support duties at the direction of and subject to the supervision and instruction of a
- 18 mortgage loan originator;
- 19 (23) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
- 20 system developed and maintained by the Conference of State Bank Supervisors and
- 21 the American Association of Residential Mortgage Regulators;
- 22 (24) "Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage
- 23 loan;
- 24 (25) "Pattern of residential mortgage fraud" means residential mortgage fraud that
- 25 involves two (2) or more mortgage loans that have the same or similar intents,
- 26 results, accomplices, victims, or methods of commission or otherwise are
- 27 interrelated by distinguishing characteristics;

- 1 (26) "Person" means a natural person, or any type or form of corporation, company,
2 partnership, proprietorship, or association;
- 3 (27) "Physical location" means any location where the mortgage lending process,
4 including the servicing of mortgage loans, is conducted;
- 5 (28) "Record" means any books of account or other books, papers, journals, ledgers,
6 statements, instruments, documents, files, messages, writings, correspondence, or
7 other internal data or information, made or received in the regular course of
8 business or otherwise, regardless of the mode in which it is recorded;
- 9 (29) "Registrant" means a person to whom a certificate of registration has been issued;
- 10 (30) "Residential mortgage loan application" means the submission of a borrower's
11 financial information in anticipation of a credit decision, whether written or
12 computer-generated, relating to a mortgage loan;
- 13 (31) "Residential real property" means a dwelling as defined in the Federal Truth in
14 Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is constructed
15 or intended to be constructed a dwelling as so defined;
- 16 (32) "Service" or "servicing" means:
- 17 (a) Receiving any scheduled periodic mortgage loan payments from a borrower,
18 including amounts for escrow accounts or other fees or obligations related to
19 the mortgage loan, and making or crediting the payments to the mortgage loan
20 account, owner of the loan, or a third party assigned to receive said payments;
- 21 (b) Maintaining accountings of principal, interest, and other accounts associated
22 with the servicing of mortgage loans and responding to borrower inquiries
23 regarding the status of these loans or accounts;
- 24 (c) Initiating, supervising, or conducting foreclosure proceedings and property
25 dispositions in the case of default, except this shall not include licensed
26 attorneys representing clients in such matters; or
- 27 (d) In the case of a home equity conversion mortgage or reverse mortgage,

1 making payments to the borrower;

2 (33) "Takes a residential mortgage loan application" means:

3 (a) Recording the borrower's application information in any form for use in a
4 credit decision; or

5 (b) Receiving the borrower's application information in any form for use in a
6 credit decision;

7 (34) "Transact business in Kentucky" or "transacting business in Kentucky" means to
8 participate in any meaningful way in the mortgage lending process, including the
9 servicing of mortgage loans, with respect to any residential real property located in
10 Kentucky;

11 (35) "Unique identifier" means a number or other identifier assigned by protocols
12 established by the Nationwide Mortgage Licensing System and Registry; and

13 (36) "Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled
14 by another person.

15 ➔Section 762. KRS 286.8-012 is amended to read as follows:

16 Any party aggrieved by any decision of the commissioner~~executive director~~ under the
17 provisions of KRS 286.8-020 or 286.8-100 may request an administrative hearing which
18 shall be conducted in accordance with KRS Chapter 13B.

19 ➔Section 763. KRS 286.8-020 is amended to read as follows:

20 (1) The following mortgage loan companies and mortgage loan brokers shall be subject
21 to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of
22 this section, but shall be exempt from all other provisions of this subtitle:

23 (a) Any person duly licensed, chartered, and otherwise subject to regular
24 examination at least once every two (2) years by a state or federal financial
25 institution regulatory agency under the laws of this state or any other state or
26 the United States as a bank, bank holding company, trust company, credit
27 union, savings and loan association, savings and loan association holding

1 company, service corporation subsidiary of a savings and loan association,
2 insurance company, real estate investment trust as defined in 26 U.S.C. sec.
3 856, an institution of the farm credit system organized under the Farm Credit
4 Act of 1971 as amended, or any wholly owned subsidiary of any such person
5 if the subsidiary is subject to regular examination at least once every two (2)
6 years by a state or federal financial institution regulatory agency;

7 (b) Any natural person who makes a mortgage loan secured by a dwelling that
8 served as the natural person's residence, unless the natural person is
9 compensated in connection with that transaction by a mortgage loan company,
10 mortgage loan broker, or other mortgage loan originator, or by an agent of
11 such company, broker, or other originator;

12 (c) Any natural person who makes a mortgage loan to an immediate family
13 member of the natural person unless the natural person is compensated in
14 connection with that transaction by a mortgage loan company, mortgage loan
15 broker, or other mortgage loan originator, or by an agent of such company,
16 broker, or other originator;

17 (d) The United States of America; the Commonwealth of Kentucky; any other
18 state, district, territory, commonwealth, or possession of the United States of
19 America; any city, county, or other political subdivision; and any agency,
20 division, or corporate instrumentality of any of the foregoing;

21 (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan
22 Mortgage Corporation (FHLMC), and the Government National Mortgage
23 Association (GNMA);

24 (f) Any mortgage loan company or mortgage loan broker making or brokering a
25 mortgage loan involving housing initially transferred by certificate of title
26 under KRS Chapter 186A;

27 (g) A consumer loan or finance company or an industrial loan company licensed

1 under Subtitle 4 or 7 of this chapter whose primary business is originating
 2 consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter
 3 or any wholly owned subsidiary of such a consumer loan or finance company
 4 or an industrial loan company, except that they shall be subject to the
 5 prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and

6 (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C.
 7 sec. 501(c)(3) and authorized to do business in this Commonwealth, and that
 8 has affordable housing as a primary purpose in its operations.

9 (2) The following shall be exempt from the licensing provisions of this subtitle and the
 10 examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on
 11 grounds satisfactory to the commissioner~~executive director~~ that an examination is
 12 necessary, but shall otherwise be subject to all other provisions of this subtitle:

13 (a) A mortgage loan company or mortgage loan broker approved and regulated by
 14 the United States Department of Housing and Urban Development to perform
 15 business in this Commonwealth; and

16 (b) Any branch of a mortgage loan company or mortgage loan broker listed in
 17 paragraph (a) of this subsection, provided the branch is approved and
 18 regulated by the United States Department of Housing and Urban
 19 Development to perform business in this Commonwealth.

20 (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or
 21 branch thereof relying upon an exemption under subsection (1)(h) or (2)(a) or (b) of
 22 this section shall file with the commissioner~~executive director~~ a written
 23 application for a claim of exemption. The commissioner~~executive director~~ shall
 24 approve an application for an exemption that is timely filed and meets the
 25 requirements of this subtitle. The period of exemption shall be from January 1
 26 through December 31, and the exemption shall expire on December 31 of the same
 27 calendar year. Every person granted an exemption under this section shall file a

1 written application for a new exemption on an annual basis. The application shall be
 2 received by the commissioner~~executive director~~ on or before December 31 of the
 3 same calendar year. A written application for a partial-year exemption shall also
 4 expire on December 31 of the same calendar year that the written application for an
 5 exemption is granted.

6 (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon
 7 an exemption under subsection (2)(a) or (b) of this section shall fund or broker a
 8 minimum of twelve (12) Federal Housing Administration-insured loans on
 9 Kentucky residential real properties each year in order to maintain its exemption.

10 (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon
 11 an exemption under subsection (2)(a) or (b) of this section who ceases to be
 12 approved or regulated by the Department of Housing and Urban Development shall
 13 notify the commissioner~~executive director~~, in writing, within ten (10) days after it
 14 ceases to be regulated by the United States Department of Housing and Urban
 15 Development.

16 (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section
 17 shall not be required to file with the commissioner~~executive director~~ a claim of
 18 exemption.

19 (7) (a) Any natural person making a loan under subsection (10) of this section shall
 20 make the following disclosure, on a separate sheet of paper in minimum
 21 eighteen (18) point type, to the borrower:

22 DISCLOSURE

23 (Name and address of lender) is not licensed or regulated by the Kentucky
 24 Department~~Office~~ of Financial Institutions.

25 (Name of lender) is making this mortgage loan with his or her own funds, for
 26 the person's own investment, without intent to resell the mortgage loan.

27 (The phone number and address of the Kentucky Department~~Office~~ of

1 Financial Institutions.)

2 (b) A copy of the disclosure, signed by the borrower, shall be maintained by the
3 natural person for a period not to exceed three (3) years after the date the
4 mortgage loan is paid in full.

5 (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon
6 an exemption under subsection (2)(a) or (b) of this section shall provide a list of
7 funded or brokered Federal Housing Administration-insured loans from December 1
8 of the previous calendar year to November 30 of the current calendar year to the
9 commissioner~~executive director~~ by December 31 of each year on a form
10 prescribed by the commissioner~~executive director~~.

11 (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for
12 an exemption under subsection (2)(a) or (b) of this section shall not be approved for
13 an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan
14 company, mortgage loan broker, or branch thereof has:

15 (a) Held a mortgage loan company or mortgage loan broker license or registration
16 for five (5) consecutive years prior to the filing of the application for an
17 exemption under this section with the commissioner~~executive director~~; or

18 (b) Been approved and regulated by the United States Housing and Urban
19 Development to conduct business in the mortgage lending process for five (5)
20 consecutive years prior to the filing of the application for an exemption under
21 this section with the commissioner~~executive director~~.

22 (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who
23 makes a mortgage loan with his or her own funds for the person's investment
24 without the intent to resell the mortgage loan shall be exempt from the provisions of
25 this subtitle except for the following:

26 (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on
27 grounds satisfactory to the commissioner~~executive director~~ that an

- 1 examination is necessary;
- 2 (b) Disclosure requirements of subsection (7) of this section;
- 3 (c) Any investigation and enforcement provisions of this subtitle including KRS
4 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
- 5 (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
- 6 (e) Registration and regulatory requirements of KRS 286.8-255.
- 7 (11) No person shall hold both a claim of exemption and a license granted under this
8 subtitle.
- 9 (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every
10 mortgage loan company and mortgage loan broker shall make available and grant
11 access to the commissioner~~executive director~~ or an examiner of the
12 commissioner~~executive director~~ the records in its possession or control that are
13 subject to the provisions of this subtitle.
- 14 (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no
15 mortgage loan company or mortgage loan broker shall impede the
16 commissioner~~executive director~~ or an examiner of the commissioner~~executive~~
17 ~~director~~ from interviewing any person regarding any potential violations of this
18 subtitle.
- 19 (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every
20 mortgage loan company and mortgage loan broker that employs or utilizes the direct
21 services of a mortgage loan originator subject to the registration and regulatory
22 requirements of KRS 286.8-255 shall complete and timely submit to the
23 Nationwide Mortgage Licensing System and Registry an annual report of condition,
24 which shall be in such form and contain such information as the Nationwide
25 Mortgage Licensing System and Registry may require, along with any other
26 information which may be required by the commissioner~~executive director~~.
- 27 ➔Section 764. KRS 286.8-030 is amended to read as follows:

- 1 (1) (a) It is unlawful for any person to transact business in Kentucky, either directly
 2 or indirectly, as a mortgage loan company or mortgage loan broker if the
 3 mortgage loan company or mortgage loan broker is not licensed in accordance
 4 with the requirements of this subtitle, unless that person is exempt under KRS
 5 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed
 6 application for a claim of exemption, and the filed application for a claim of
 7 exemption has been approved by the commissioner~~[executive director]~~.
- 8 (b) It is unlawful for any natural person to make a loan under KRS 286.8-020(10)
 9 without making the disclosure required by KRS 286.8-020(7).
- 10 (c) It is unlawful for any natural person to transact business in Kentucky, either
 11 directly or indirectly, as a mortgage loan originator or mortgage loan
 12 processor, unless otherwise exempted, if the mortgage loan originator or
 13 mortgage loan processor is not registered in accordance with KRS 286.8-255.
- 14 (d) It is unlawful for any mortgage loan company or mortgage loan broker to
 15 employ or use a mortgage loan originator or a mortgage loan processor if the
 16 mortgage loan originator or mortgage loan processor is not registered in
 17 accordance with KRS 286.8-255 or otherwise exempted.
- 18 (e) It is unlawful for any mortgage loan company to employ or use, with or
 19 without compensation, a mortgage loan broker if the mortgage loan broker is
 20 not licensed in accordance with the requirements of this subtitle unless that
 21 person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3),
 22 has timely filed a completed application for a claim of exemption, and the
 23 filed application for a claim of exemption has been approved by the
 24 commissioner~~[executive director]~~.
- 25 (2) Neither the fact that a license or certificate of registration has been issued nor the
 26 fact that any person, business, or company is effectively registered or licensed,
 27 constitutes a finding by the commissioner~~[executive director]~~ that any document

1 filed under this subtitle is true, complete, and not misleading. Nor does such fact
 2 directly or indirectly imply approval of the registrant or licensee by the
 3 commissioner~~executive director~~ or the Commonwealth of Kentucky. It is
 4 unlawful to make or cause to be made to any prospective customer or client any
 5 representation inconsistent with this subsection.

6 (3) Any mortgage loan company or mortgage loan broker who willfully transacts
 7 business in Kentucky in violation of subsection (1) of this section shall have no
 8 right to collect, receive, or retain any interest or charges whatsoever on a loan
 9 contract, but the unpaid principal of the loan shall be paid in full.

10 (4) Each solicited, attempted, or closed loan shall constitute a separate violation of this
 11 section.

12 (5) The unique identifier, name, and signature of any person originating a mortgage
 13 loan shall be clearly shown on the mortgage loan application. It shall be unlawful to
 14 make or cause to be made any representations on a mortgage loan application that
 15 are inconsistent with this subsection. The unique identifier shall also be displayed
 16 on solicitations or advertisements, including business cards or Web sites, of all
 17 persons holding themselves out as being able to originate mortgage loans in
 18 Kentucky, and any other document as established by rule, regulation, or order of the
 19 commissioner~~executive director~~.

20 ➔Section 765. KRS 286.8-032 is amended to read as follows:

21 (1) A license as a mortgage loan company or a mortgage loan broker may be obtained
 22 by filing a written application with the commissioner~~executive director~~. The
 23 commissioner~~executive director~~ may require the electronic filing of the
 24 application and fees with the State Regulatory Registry, LLC, or its successor
 25 organization; its parent, affiliate, or operating subsidiary; or other agencies or
 26 authorities, as part of the nationwide mortgage licensing system, and consistent with
 27 the intent found in KRS 286.8-285.

- 1 (2) The application shall:
 - 2 (a) Be sworn to;
 - 3 (b) State the name of the applicant and each of the applicant's affiliates and
 - 4 operating subsidiaries engaged in business as a mortgage loan company or a
 - 5 mortgage loan broker;
 - 6 (c) State the name under which the applicant will conduct business in Kentucky;
 - 7 (d) State the physical address of the applicant's principal office and branch or
 - 8 branches;
 - 9 (e) List the name, residence, and business address of each person having an
 - 10 interest in the business as principal, partner, officer, trustee, and director,
 - 11 specifying the capacity and title of each;
 - 12 (f) Indicate the general plan and character of the business;
 - 13 (g) Contain a corporate surety bond or other instrument as prescribed by KRS
 - 14 286.8-060;
 - 15 (h) If applying for a mortgage loan broker license, contain a compiled financial
 - 16 statement of the applicant; or, if applying for a mortgage loan company
 - 17 license, contain a reviewed or audited financial statement of the applicant
 - 18 prepared by a licensed or certified public accountant;
 - 19 (i) Include payment of the required fees; and
 - 20 (j) Include such other information as the commissioner~~[executive director]~~
 - 21 determines necessary.
- 22 (3) No mortgage loan company license may be granted unless the applicant:
 - 23 (a) Has and maintains, so long as the license is in effect, a minimum, documented
 - 24 funding source of one million dollars (\$1,000,000);
 - 25 (b) Has a net worth in excess of one million dollars (\$1,000,000); or
 - 26 (c) Has and maintains a net worth in excess of one hundred thousand dollars
 - 27 (\$100,000) and certifies to the commissioner~~[executive director]~~ that the

1 company will not make or purchase loans secured by mortgages on residential
2 real property located in Kentucky so long as the license is in effect.

3 (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle
4 all officers and employees of the person, if a corporation, and all members, partners,
5 trustees, and employees, if an association, partnership, natural person, or trust, to
6 engage in the mortgage loan business pursuant to this subtitle, subject to the
7 applicable requirements of this subtitle.

8 (5) If a licensee desires to establish a branch, the licensee shall file an application with
9 the commissioner~~[executive director]~~ that includes the physical location and
10 telephone number of the branch, the name of the prospective manager, the
11 anticipated opening date, and any other information requested by the
12 commissioner~~[executive director]~~.

13 (6) Each applicant for a mortgage loan broker license shall have at least one (1)
14 managing principal at all times. This managing principal shall provide the
15 commissioner~~[executive director]~~ sufficient proof of a minimum of two (2) years'
16 experience working in the mortgage industry. The commissioner~~[executive~~
17 director] shall determine from the application whether an applicant has sufficient
18 experience to meet this requirement. Each mortgage loan broker shall obtain written
19 approval from the commissioner~~[executive director]~~ prior to a change of managing
20 principal.

21 (7) All applicants for a mortgage loan broker license shall have successfully completed
22 an educational training course, approved by the department~~[office]~~, of not less than
23 thirty (30) classroom hours' duration. Applicants who have held a mortgage loan
24 broker license for at least one (1) year in the past five (5) years shall be exempt from
25 this requirement. This section shall not apply to renewals of existing licenses.
26 Approval of an applicant for a mortgage loan broker license under this subsection
27 shall be conditioned on the applicant establishing that the district, state, or territory

1 from which the applicant applies, resides, or performs the primary portion of his or
 2 her mortgage business has rules, regulations, or other provisions which by
 3 reciprocity or comity are at least equivalent to this subsection.

4 (8) The application for a mortgage loan broker and mortgage loan company license
 5 shall state:

6 (a) The address of the physical location where the business is to be located in
 7 compliance with KRS 286.8-250 and whether such location is a residence.
 8 The physical location where the mortgage lending process is conducted shall
 9 have a street address. A post office box or similar designation shall not meet
 10 the requirements of this subsection. The physical location shall be accessible
 11 to the general public as a place of business, unless the physical location is a
 12 residence and proof of residence has been submitted as required by this
 13 section. Photographs of the exterior, interior, and exterior sign of each
 14 location shall accompany the application. If the physical location is not a
 15 residence and is leased, the lease shall be for a minimum term of one (1) year.
 16 A copy of the lease and the names of all employees conducting business under
 17 the lease shall accompany the application. If the physical location is a
 18 residence, proof that the location is a residence, in a form as required by the
 19 commissioner~~executive director~~, shall accompany the application. Proof of
 20 residence shall confirm that the residence is owned or leased by the mortgage
 21 loan broker, mortgage loan company, or its employees or owners and that the
 22 residence is the main residence of any such persons. Proof of physical location
 23 shall include proof that local zoning requirements are satisfied.

24 (b) A mortgage loan company or mortgage loan broker shall notify the
 25 commissioner~~executive director~~ of a change in the location or name of its
 26 business or the addition of any branch or branches in writing at least ten (10)
 27 days prior to the change.

1 (9) On or after January 1, 2009, every mortgage loan company and mortgage loan
 2 broker shall maintain an agent for service of process in the Commonwealth. The
 3 name, address, telephone number, and electronic mail address of the agent for
 4 service of process shall be filed with the application. The commissioner~~executive~~
 5 ~~director~~ shall be notified in writing at least five (5) days prior to any change in the
 6 status of an agent for service of process.

7 (10) The commissioner~~executive director~~ may deem an application abandoned when
 8 an applicant fails to provide or respond to a request for additional information.

9 ➔Section 766. KRS 286.8-034 is amended to read as follows:

10 (1) An applicant for a license under this subtitle shall provide the
 11 commissioner~~executive director~~ with separate checks payable to the Kentucky
 12 State Treasurer for:

13 (a) An investigation fee of three hundred dollars (\$300) for the principal office
 14 and one hundred fifty dollars (\$150) for each branch office; and

15 (b) A license fee of four hundred fifty dollars (\$450) for the principal office and
 16 two hundred fifty dollars (\$250) for each branch originating mortgages on
 17 residential real properties located in Kentucky if the applicant applies for a
 18 license on or between November 1 and June 30 of the following calendar year
 19 or of one hundred fifty dollars (\$150) for the principal office and one hundred
 20 dollars (\$100) for each branch if the applicant applies for a license on or
 21 between July 1 and October 31 of the same calendar year.

22 (2) A license issued between January 1 and October 31 of the same calendar year shall
 23 expire on December 31 of the same calendar year. A license issued between
 24 November 1 and December 31 of the same calendar year shall expire on December
 25 31 of the following calendar year.

26 (3) A license may be renewed by paying the annual renewal license fee which is three
 27 hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars

(\$250) for each branch originating mortgages on residential real properties located in Kentucky, submitting to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, and submitting to the commissioner~~[executive director]~~ any other information required by the commissioner~~[executive director]~~. The commissioner~~[executive director]~~ shall not approve the renewal of a mortgage loan broker's license if the commissioner~~[executive director]~~ has not received the information on physical location as required in KRS 286.8-032(8).

- (4) The application, fees, and any required information shall be received by the commissioner~~[executive director]~~ on or before November 30 prior to the December 31 expiration date. The commissioner~~[executive director]~~ may reinstate the license within thirty-one (31) days of the expiration of the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.
- (5) The commissioner~~[executive director]~~ shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

➔Section 767. KRS 286.8-036 is amended to read as follows:

- (1) Each license issued under this subtitle shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.
- (2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.
- (3) A license may not be transferred or assigned without the prior written approval of the commissioner~~[executive director]~~.

1 (4) No licensee shall transact the business provided for by this subtitle under any other
2 name or maintain an office at any location other than that designated in the license.

3 (5) Every licensed mortgage loan company or mortgage loan broker shall notify the
4 commissioner~~[executive director]~~, in writing, within ten (10) days of the closing of
5 any licensed office or registered Kentucky branch.

6 ➔Section 768. KRS 286.8-044 is amended to read as follows:

7 (1) Notice of entry of any order of suspension or denial of a license, registration, or
8 claim of exemption to any applicant, registrant, or licensee shall be given in writing
9 and served personally or sent by certified mail to the last known address of the
10 person affected. The affected person, upon timely written request to the
11 commissioner~~[executive director]~~, shall be entitled to a hearing in accordance with
12 the provisions of KRS Chapter 13B; but if no written request is received within
13 twenty (20) days of service of the notice, the commissioner~~[executive director]~~
14 shall enter a final order suspending or denying the license or registration.

15 (2) The commissioner~~[executive director]~~ may file an administrative complaint against
16 any person if it appears on grounds satisfactory to the commissioner~~[executive~~
17 ~~director]~~ that a potential or actual violation of this subtitle has been committed and
18 when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and
19 286.8-990. The commissioner~~[executive director]~~ shall serve the administrative
20 complaint by certified mail or personal delivery to the last known address of the
21 person named in the complaint. The person named in the administrative complaint
22 shall be entitled to a hearing, but only upon timely receipt of a written answer and
23 request for a hearing within twenty (20) days of the service or hand delivery of the
24 administrative complaint. If timely requested, an administrative hearing shall be
25 held in accordance with the provisions of KRS Chapter 13B. If a written answer and
26 request for hearing are not made within twenty (20) days of service or delivery of
27 the complaint, the commissioner~~[executive director]~~ shall enter a final order

1 granting the relief requested in the complaint.

2 (3) Service by certified mail shall be complete upon the earlier of the following:

3 (a) The date on which the person receives the mail;

4 (b) The date on which the agency receives the return receipt; or

5 (c) The date on which the agency receives notice that the mail has been returned
6 undelivered.

7 ➔Section 769. KRS 286.8-046 is amended to read as follows:

8 (1) The commissioner~~executive director~~ may levy a civil penalty against any person
9 who violates any provision of or any administrative regulation promulgated under
10 this subtitle or order issued by the commissioner~~executive director~~ under this
11 subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor
12 more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs
13 and expenses for the examination, investigation, and prosecution of the matter,
14 including reasonable attorney's fees and court costs.

15 (2) The commissioner~~executive director~~ may order restitution, refund, recovery of
16 expenses, or direct such other affirmative action as the commissioner~~executive~~
17 ~~director~~ deems necessary against any person who violates any order issued by the
18 commissioner~~executive director~~ or any provision of, or administrative regulation
19 promulgated under, this subtitle.

20 ➔Section 770. KRS 286.8-048 is amended to read as follows:

21 (1) The commissioner~~executive director~~ may enter an emergency order suspending,
22 limiting, or restricting the license, claim of exemption, or registration of any
23 mortgage loan broker, mortgage loan company, mortgage loan originator, or
24 mortgage loan processor without notice or hearing if it appears upon grounds
25 satisfactory to the commissioner~~executive director~~ that the mortgage loan broker,
26 mortgage loan company, mortgage loan originator, or mortgage loan processor has
27 engaged or is engaging in unsafe, unsound, and illegal practices that pose an

1 imminent threat to the public interest.

2 (2) One (1) or more of the following circumstances shall be considered sufficient
3 grounds for an emergency order under this section if it appears on grounds
4 satisfactory to the commissioner~~[executive director]~~ that:

5 (a) The mortgage loan broker, mortgage loan company, mortgage loan originator,
6 or mortgage loan processor does not meet or has failed to comply with more
7 than one (1) of the requirements of this subtitle and the violations appear to be
8 willful;

9 (b) The mortgage loan broker or mortgage loan company is in such financial
10 condition that it cannot continue in business with safety to its customers;

11 (c) The mortgage loan broker, mortgage loan company, mortgage loan originator,
12 or mortgage loan processor has been indicted, charged with, or found guilty of
13 any act involving fraud, deception, theft, or breach of trust, or is the subject of
14 an administrative cease-and-desist order or similar order, or of a permanent or
15 temporary injunction currently in effect entered by any court or agency of
16 competent jurisdiction;

17 (d) The mortgage loan broker, mortgage loan company, mortgage loan originator,
18 or mortgage loan processor has made any misrepresentations or false
19 statements to, or concealed any essential or material fact from, any person in
20 the course of doing business in the mortgage lending process, or has engaged
21 in any course of business that has worked or tended to work a fraud or deceit
22 upon any person or would so operate;

23 (e) The mortgage loan broker, mortgage loan company, mortgage loan originator,
24 or mortgage loan processor has made or caused to be made to the
25 commissioner~~[executive director]~~ any false representation of material fact,
26 has refused to permit an examination, or has refused or failed, within a
27 reasonable time, to furnish any information or make any report that may have

1 been requested or required by the commissioner~~executive director~~;

2 (f) The mortgage loan broker, mortgage loan company, mortgage loan originator,
3 or mortgage loan processor has had any license, registration, or claim of
4 exemption related to the financial services industry denied, suspended, or
5 revoked under the laws of this state or any other state of the United States, or
6 has surrendered or terminated any license, registration, or claim of exemption
7 issued by this state or any other jurisdiction under threat of administrative
8 action; or

9 (g) The surety bond required under KRS 286.8-060 has terminated, expired, or no
10 longer remains in effect.

11 (3) An emergency order issued under this section becomes effective when signed by the
12 commissioner~~executive director~~. The emergency order shall be delivered by
13 personal delivery or certified mail to the last known address of the party or parties.
14 The order shall be deemed served upon delivery or upon return of the order.

15 (4) A party aggrieved by an emergency order issued by the commissioner~~executive~~
16 ~~director~~ under this section may request an emergency hearing. The request for
17 hearing shall be filed with the commissioner~~executive director~~ within twenty (20)
18 days of service of the emergency order.

19 (5) Upon receipt of a written request for emergency hearing, the
20 commissioner~~executive director~~ shall conduct an emergency hearing as required
21 under KRS 13B.125, within ten (10) working days from the date of receipt of the
22 request for hearing, unless the parties agree otherwise.

23 (6) An emergency order issued under this section shall remain in effect until it is
24 withdrawn or superseded by an order of the commissioner~~executive director~~ or
25 until it is terminated by a court order.

26 ➔Section 771. KRS 286.8-060 is amended to read as follows:

27 (1) Except as otherwise provided in this section, each mortgage loan company,

1 mortgage loan broker, and mortgage loan originator shall post or be covered by a
 2 surety bond for the entire licensure or registration period in an amount prescribed by
 3 the commissioner~~executive director~~, but in no event shall the bond be less than
 4 two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and
 5 fifty thousand dollars (\$50,000) for mortgage loan brokers.

6 (2) Every bond shall provide for suit thereon by any person who has a cause of action
 7 under this subtitle. The total liability of the surety, to all persons, cumulative or
 8 otherwise, shall not exceed the amount specified in the bond.

9 (3) The bond shall be in a form prescribed by the commissioner~~executive director~~ and
 10 shall be made payable to the commissioner~~executive director~~. The terms of the
 11 bond shall provide that it may not be terminated without thirty (30) days prior
 12 written notice to the commissioner~~executive director~~.

13 (4) Every bond shall be available for the recovery of expenses, fines, restitution, and
 14 fees levied by the commissioner~~executive director~~ under this subtitle, and for
 15 losses or damages that have been incurred by any borrower or consumer as a result
 16 of the registrant's or licensee's failure to comply with the requirements of this
 17 subtitle.

18 (5) Every bond shall provide that no suit shall be maintained to enforce any liability on
 19 the bond unless brought within three (3) years after the act upon which it is based.

20 (6) If the commissioner~~executive director~~ or the commissioner's~~executive director's~~
 21 representative shall at any time reasonably determine that the bond or securities
 22 aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may
 23 by written order require the filing of a new or supplemental bond or the deposit of
 24 new or additional securities in order to secure compliance with this subtitle, the
 25 order to be complied with within thirty (30) days following service thereof upon the
 26 registrant or licensee.

27 ➔Section 772. KRS 286.8-070 is amended to read as follows:

- 1 (1) The use of the words "certified" or "licensed" or any form thereof separately or in
 2 any combination thereof with other words or syllables, is prohibited as part of the
 3 name of a mortgage loan company or a mortgage loan broker. No license of a
 4 proposed mortgage loan company or a mortgage loan broker having the same name
 5 as a corporation authorized to do business under the laws of this state or a name so
 6 nearly resembling it as to be calculated to deceive shall be issued by the
 7 commissioner~~executive director~~.
- 8 (2) No person, unless lawfully authorized to do business in this state under the
 9 provisions of this subtitle, and actually engaged in carrying on a mortgage loan or
 10 loan broker business, shall do business under any name or title which contains the
 11 terms "mortgage company," "mortgage loan company," "mortgage loan broker,"
 12 "loan broker," "financial broker," or any combination employing the words
 13 "mortgage," "loan," or "broker," with one (1) or more of the words "association,"
 14 "institution," "society," "company," "corporation," or words of similar import, or
 15 use any name or represent in any manner which indicates or reasonably implies that
 16 his or its business is that of a mortgage loan company or mortgage loan broker as
 17 defined by KRS 286.8-010.
- 18 (3) A mortgage loan company or mortgage loan broker required to have a license under
 19 this subtitle shall not use the words "bank," "trust," "national," or "federal," or any
 20 form thereof separately or in combination thereof with other words or syllables as a
 21 part of its name or to otherwise identify itself.
- 22 ➔Section 773. KRS 286.8-075 is amended to read as follows:
- 23 (1) As used in this section, "change of control" means:
- 24 (a) A transfer of voting stock which results in giving a person, directly or
 25 indirectly, the power to direct the management and policy of a mortgage loan
 26 company or mortgage loan broker; or
- 27 (b) A transfer of at least ten percent (10%) of the outstanding voting stock of a

1 mortgage loan company or a mortgage loan broker.

2 (2) A transfer of voting stock of a mortgage loan company or mortgage loan broker
3 which constitutes a change of control shall be approved in writing by the
4 commissioner~~[executive-director]~~, prior to the transfer.

5 (3) The owner, president, chief executive officer or a partner shall apply to the
6 commissioner~~[executive-director]~~ for approval of a transfer of voting stock in his
7 mortgage loan company or mortgage loan broker which constitutes a change of
8 control. The application must contain information which shows that the
9 requirements of this subtitle for obtaining a license will be satisfied after the change
10 of control.

11 ➔Section 774. KRS 286.8-080 is amended to read as follows:

12 Upon receipt of the application the commissioner~~[executive-director]~~ shall first determine
13 whether or not it complies with the provisions of this subtitle and, if *the*
14 commissioner~~[he]~~ so finds, he *or she* shall then inquire into the advisability of approving
15 the application by determining whether the applicant demonstrates such financial
16 responsibility, financial condition, and business expertise, character and general fitness to
17 reasonably warrant the belief that the applicant's business will be conducted honestly,
18 fairly and efficiently and in such a way as to justify public confidence. The
19 commissioner~~[executive-director]~~ may investigate and consider the qualifications of
20 officers and directors or principals of an applicant in determining whether this
21 qualification has been met. If the commissioner~~[executive-director]~~ finds that the
22 applicant meets all the above requirements, he shall approve the application.

23 ➔Section 775. KRS 286.8-090 is amended to read as follows:

24 (1) The commissioner~~[executive-director]~~ may suspend; revoke; place on probation;
25 condition; refuse to issue or renew a license, registration, or exemption; or accept
26 surrender of a license, registration, or exemption in lieu of revocation or suspension;
27 or issue a cease and desist order if the commissioner~~[executive-director]~~ finds that

1 the person, applicant, licensee, or registrant:

- 2 (a) Does not meet, no longer meets, or has failed to comply with the requirements
3 of this subtitle;
- 4 (b) Is unfit through lack of financial responsibility or experience to conduct the
5 business of a mortgage loan company or mortgage loan broker, as the case
6 may be;
- 7 (c) Does not conduct his business in accordance with the law or the method of
8 business includes or would include activities which are illegal where
9 performed;
- 10 (d) Collects interest at a usurious rate;
- 11 (e) Is in such financial condition that he cannot continue in business with safety
12 to his customers;
- 13 (f) Is guilty of fraud in connection with any transaction governed by this subtitle,
14 or is the subject of an administrative cease and desist order or similar order, or
15 a permanent or temporary injunction of any court of competent jurisdiction
16 entered under any other federal or state act;
- 17 (g) Has made any misrepresentations or false statements to, or concealed any
18 essential or material fact from, any person in the mortgage lending process, or
19 has engaged in a course of business that has worked or tended to work a fraud
20 upon any person or would so operate;
- 21 (h) Has made or caused to be made to the commissioner~~[executive director]~~ any
22 false representation of material fact or has suppressed or withheld from the
23 commissioner~~[executive director]~~ any information that the person possesses
24 and which, if submitted to the commissioner~~[executive director]~~, would have
25 rendered the person ineligible to be licensed, registered, or exempted from
26 licensing or registration under this subtitle;
- 27 (i) Has failed to account to persons interest for all funds received for the escrow

1 account required under KRS 286.8-130;

2 (j) Has refused to permit an examination or investigation by the
3 commissioner~~[executive-director]~~ of his books and affairs or has refused or
4 failed, within a reasonable time, to furnish any information or make any report
5 that may be required by the commissioner~~[executive-director]~~ under the
6 provisions of this subtitle;

7 (k) Has been convicted of any misdemeanor of which an essential element is
8 fraud, breach of trust, or dishonesty, or any felony, or has pending against him
9 any felony charge;

10 (l) Has had any license, registration, or claim of exemption related to the
11 financial services industry denied, suspended, or revoked under the laws of
12 this state or any other state of the United States, or has surrendered or
13 terminated any license, registration, or claim of exemption issued by this state
14 or any other jurisdiction under threat of administrative action;

15 (m) Has employed or contracted with a person who has failed to register or has
16 had a license or registration denied, revoked, or suspended in this
17 Commonwealth or another state;

18 (n) Has demonstrated incompetence or untrustworthiness to act as a licensee or
19 registrant or to continue a claim of exemption granted by application under
20 this subtitle;

21 (o) Has failed to pay any required fee under this subtitle;

22 (p) Has abandoned an application by failing to provide the
23 commissioner~~[executive-director]~~ any information required under this
24 subtitle, or requested by the commissioner~~[executive-director]~~, to complete an
25 application;

26 (q) Has influenced, or attempted to influence through coercion, extortion, or
27 bribery, the development, reporting, result, or review of a real estate appraisal

- 1 sought in connection with a mortgage loan;
- 2 (r) Has failed to comply with an administrative or court order imposing child
- 3 support obligations;
- 4 (s) Has failed to pay state income taxes or to comply with any administrative or
- 5 court order directing the payment of state income tax;
- 6 (t) Has improperly used notes or other resources to complete an examination for
- 7 a license or registration;
- 8 (u) Has violated any provision of KRS 360.100; or
- 9 (v) Has violated any provision of this subtitle, administrative regulation
- 10 promulgated hereunder, or order issued by the commissioner~~executive~~
- 11 director].
- 12 (2) Any person whose license, registration, or claim of exemption has been denied,
- 13 suspended, revoked, or surrendered in lieu of revocation or suspension under this
- 14 section is prohibited from participating in any business activity of a registrant or
- 15 licensee under this subtitle and from engaging in any business activity on the
- 16 premises where a licensee or registrant under this subtitle is conducting its business.
- 17 (3) The commissioner~~executive director~~ shall execute a written order whenever a
- 18 license, registration, or claim of exemption issued pursuant to this subtitle is
- 19 suspended or revoked. The commissioner~~executive director~~ shall serve the written
- 20 order upon the licensee, registrant, or person claiming the exemption. The written
- 21 order shall be sent by certified mail, return receipt requested, postage prepaid, to the
- 22 last known principal business address of such licensee, registrant, or person
- 23 claiming the exemption, as set forth in the records of the commissioner~~executive~~
- 24 director]. The written order shall be deemed to have been received by the licensee,
- 25 registrant, or person claiming the exemption three (3) business days following the
- 26 mailing thereof.
- 27 (4) Any person who continues to participate in any business activity covered by this

1 subtitle after such person's license, registration, or claim of exemption has been
2 revoked, suspended, or denied shall be subject to the penalties in this section, KRS
3 286.8-046, and KRS 286.8-990 and shall be in violation of KRS 367.170.

4 (5) Any person who has had a license, registration, or claim of exemption denied by the
5 commissioner~~executive director~~ shall not be eligible to apply for a license,
6 registration, or claim of exemption under this subtitle until after expiration of one
7 (1) year from the date of denial.

8 (6) Any person who has had a license, registration, or claim of exemption revoked by
9 the commissioner~~executive director~~ shall not be eligible to apply for a license,
10 registration, or claim of exemption under this subtitle until after expiration of three
11 (3) years from the date of revocation. A person whose license, registration, or claim
12 of exemption has been revoked twice shall be deemed permanently revoked and
13 shall not again be eligible for a license, registration, or claim of exemption under
14 this subtitle.

15 (7) The provisions of this section shall be in addition to any other penalties or remedies
16 available, including the penalties of KRS 286.8-046.

17 (8) The commissioner~~executive director~~ may notify the Department of Revenue
18 which may institute an action in the name of the Commonwealth of Kentucky in the
19 Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of
20 any civil penalty, fine, cost, or fee assessed or levied under this subtitle.

21 (9) The commissioner~~executive director~~ may file a complaint in the Franklin Circuit
22 Court, or any court of competent jurisdiction, for a temporary restraining order or
23 injunction, against any person, where the commissioner~~executive director~~ has
24 reason to believe from evidence satisfactory to the commissioner~~executive~~
25 ~~director~~ that such person has violated, or is about to violate, a provision in this
26 subtitle, for the purpose of restraining and enjoining such person from continuing or
27 engaging in the violation or doing any act in furtherance thereof. The court shall

1 have jurisdiction over the proceeding and shall have the power to enter an order or
 2 judgment awarding preliminary or final injunctive relief that is proper. Any person
 3 who violates a temporary restraining order or injunction issued by the court entered
 4 as a result of a violation of this subtitle shall be held in contempt of court.

- 5 (10) The surrender or expiration of a license, registration, or exemption shall not affect
 6 the licensee's civil or criminal liability for acts committed prior to the surrender or
 7 expiration. No revocation, suspension, refusal to renew, surrender, or expiration of
 8 any license, registration, or exemption shall impair or affect the obligation of any
 9 preexisting lawful contract between the licensee and the borrower. The surrender or
 10 expiration of a license, registration, or exemption shall not affect a proceeding to
 11 suspend or revoke a license or registration.

12 ➔Section 776. KRS 286.8-100 is amended to read as follows:

- 13 (1) No licensee shall establish or maintain a branch transacting business in Kentucky,
 14 either directly or indirectly, without filing the application as described in KRS
 15 286.8-032(5) and receiving prior written approval of the commissioner~~executive~~
 16 ~~director~~.
- 17 (2) Each application for approval of the establishment and maintenance of a branch
 18 shall state the physical address of the proposed location, the functions to be
 19 performed, and other information the commissioner~~executive director~~ may require
 20 if different from that contained in the original application for a license or
 21 registration.
- 22 (3) Each application under this section shall be sworn to and accompanied by the
 23 appropriate fee as set out in KRS 286.8-034(1)(b).
- 24 (4) Upon the receipt by the commissioner~~executive director~~ of an application and the
 25 required fee, if he finds that the applicant is otherwise in compliance with the
 26 provisions of this subtitle, he shall approve the application.
- 27 (5) The commissioner~~executive director~~ may deem an application abandoned and

1 subject to KRS 286.8-090 when the application is received incomplete and the
2 applicant fails to provide any required information or fee under this subtitle or fails
3 to respond to a request by the commissioner~~executive director~~ for further
4 information.

5 ➔Section 777. KRS 286.8-120 is amended to read as follows:

- 6 (1) Every mortgage loan company may require borrowers to pay all necessary and
7 reasonable expenses incurred in connection with the making, closing, disbursing,
8 extending, readjusting, or renewing of loans. Without limiting the generality of the
9 foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording
10 and registration fees, title examination, title insurance, mortgage insurance, credit
11 report, survey, drawing of papers, origination fees, loan closing costs, and taxes or
12 charges imposed upon or in connection with the making and reporting of any
13 mortgage.
- 14 (2) Every mortgage loan company also may require the borrowers to pay the cost of all
15 other necessary and incidental services rendered by the mortgage loan company or
16 by others in connection with loans in reasonable amounts. Without limiting the
17 generality of the foregoing, such costs may include the cost of services of
18 inspectors, engineers, and architects.
- 19 (3) Such initial charges as described in subsections (1) and (2) of this section may be
20 collected by the mortgage loan company from the borrower and paid to any person
21 rendering such services, or paid directly by the borrower.
- 22 (4) In lieu of such initial charges to cover such expenses and costs as described in
23 subsections (1) and (2) of this section, a mortgage loan company may make a
24 reasonable charge, part or all of which may be retained by the mortgage loan
25 company which renders such service, or part or all of which may be paid to others
26 who render such services.
- 27 (5) The fees and charges authorized by this section shall be in addition to interest

1 authorized by law, and shall not be deemed to be a part of the interest collected or
2 agreed to be paid on such loans within the meaning of any law of this
3 Commonwealth which limits the rate of interest which may be exacted in any
4 transaction.

5 (6) No person shall receive any fee or other compensation of any kind in connection
6 with procuring any loan, except for services actually rendered as above provided,
7 and in no event shall a mortgage loan company or mortgage loan broker require the
8 payment of a fee greater than one hundred dollars (\$100) as a condition to
9 submitting a loan application unless the commissioner~~executive director~~ shall
10 otherwise prescribe by rule.

11 (7) All "letters of commitment," or any other contracts or agreements between
12 prospective borrowers and a mortgage loan company or a loan broker, where the
13 borrowers employ services, for a fee or commission, to obtain a loan commitment
14 or funding from a lending institution shall indicate the terms and conditions thereof,
15 including a full and detailed description of the services the broker or company
16 undertakes to perform, a specific statement of the circumstances in which the broker
17 or company will be entitled to obtain or retain consideration and the period that
18 such agreement shall remain in effect.

19 (8) Failure on the part of any party, with the exception of the borrower, to fulfill the
20 terms of any loan commitment, letter of commitment, agreement, or contract for the
21 loan of money within the time and on such terms specified therein, or the failure to
22 make a bona fide effort to secure a loan after receiving a fee for such service, shall
23 constitute default by the mortgage loan company and any other person so in default;
24 and any person damaged by such default may sue at law or equity for damages,
25 reasonable attorneys' fees and interest at the legal rate of interest under KRS
26 360.010. Every cause of action for damages under this subsection survives the death
27 of any person who might have been a plaintiff or defendant. No person may sue

1 under this subsection more than five (5) years after any act constituting default.

2 ➔Section 778. KRS 286.8-130 is amended to read as follows:

- 3 (1) All moneys paid to the mortgage loan company for payment of taxes or insurance
 4 premiums on property which secures any loan made or serviced by the mortgage
 5 loan company shall be deposited in an account which is insured by the Federal
 6 Deposit Insurance Corporation or any other account acceptable to the Federal
 7 National Mortgage Association or the United States Department of Housing and
 8 Urban Development or the Government National Mortgage Association or the
 9 United States Department of Veterans Affairs~~[Administration]~~ and kept separate,
 10 distinct, and apart from funds that belong to the mortgage loan company. The
 11 funds, when deposited, shall be designated as an "escrow account" or under some
 12 other appropriate name indicating that the funds are not the funds of the mortgage
 13 loan company.
- 14 (2) Any interest earned on funds deposited into an escrow account under subsection (1)
 15 shall belong to the borrower and shall be applied to the expenses to be paid from the
 16 account.
- 17 (3) The mortgage loan company shall, upon reasonable notice, account to any debtor
 18 whose property secures a loan made by the mortgage company for any funds which
 19 that person has paid to the mortgage loan company for the payment of taxes or
 20 insurance premiums on the property in question.
- 21 (4) The mortgage loan company shall, upon reasonable notice, account to the
 22 commissioner~~[executive director]~~ for all funds in the company's escrow account.
- 23 (5) Escrow account funds shall not be subject to execution or attachment on any claim
 24 against the mortgage company. It shall be unlawful for any mortgage company to
 25 knowingly keep or cause to be kept any funds or money in any bank under the
 26 heading of "escrow account" or any other name designating the funds or money
 27 belonging to the debtors of the mortgage loan company, except actual funds paid to

1 the mortgage loan company for the payment of taxes and insurance premiums on
 2 property securing loans made or serviced by the company.

3 (6) Payments to the debtor's escrow account shall be promptly and properly credited.

4 All escrowed taxes, insurance, and other items shall be paid in a timely fashion and
 5 not later than the statutory or contractual deadline applicable thereto.

6 ➔Section 779. KRS 286.8-140 is amended to read as follows:

7 The commissioner~~[executive director]~~ shall exercise general supervision and control over
 8 mortgage loan companies and mortgage loan brokers doing business in the
 9 Commonwealth of Kentucky. In addition to the other duties imposed upon him by law,
 10 the powers and duties of the commissioner~~[executive director]~~ are:

11 (1) To prescribe such rules, regulations, and forms and to promulgate such orders as are
 12 deemed to be necessary and appropriate to accomplish the basic purposes of and the
 13 provisions contained within this subtitle. The commissioner~~[executive director]~~
 14 may from time to time make, amend, and rescind such rules, forms, and orders,
 15 including rules and forms governing applications, registration, reports, and loan
 16 disclosure statements, and defining any terms, whether or not used in this subtitle,
 17 insofar as the definitions are not inconsistent with the provisions of this subtitle. For
 18 the purpose of rules and forms, the commissioner~~[executive director]~~ may classify
 19 loans, persons, and matters within his jurisdiction, and prescribe different
 20 requirements for different classes. No rule, form, or order may be made, amended,
 21 or rescinded unless the commissioner~~[executive director]~~ finds that the action is
 22 necessary or appropriate in the public interest and consistent with the purposes
 23 fairly intended by the policy and provisions of this subtitle. In prescribing rules and
 24 forms the commissioner~~[executive director]~~ may cooperate with other state and
 25 federal agencies with a view to achieving maximum uniformity in the form and
 26 content of applications, reports and loan disclosure statements whenever practical;

27 (2) To conduct such investigations as may be necessary to determine whether any

1 person has engaged in or is about to engage in any act, practice, or course of
 2 conduct constituting a violation of any provision of this subtitle;

3 (3) To conduct such examinations, investigations, and hearings, in addition to those
 4 specifically provided for by law, as may be necessary and proper for the efficient
 5 administration of this subtitle; and

6 (4) At the commissioner's~~executive director's~~ discretion, to require filings and fees
 7 required under this subtitle to be electronically filed with the State Regulatory
 8 Registry, LLC, or its successor organization; its parent, affiliate, or operating
 9 subsidiary; or other agencies or authorities that are part of the nationwide mortgage
 10 licensing system, or other agencies or authorities consistent with the intent of KRS
 11 286.8-285. The commissioner~~executive director~~ may accept uniform mortgage
 12 examinations or other procedures designed to implement a uniform national
 13 mortgage regulatory system or facilitate common practices and procedures among
 14 the states.

15 ➔Section 780. KRS 286.8-150 is amended to read as follows:

16 (1) Except as otherwise provided by law, applications for registration or renewals, all
 17 papers, documents, reports, and other written instruments filed with the
 18 commissioner~~executive director~~ under this subtitle, or obtained pursuant to an
 19 examination by the Department~~Office~~ of Financial Institutions are open to public
 20 inspection, except that the commissioner~~executive director~~ pursuant to the
 21 provisions of KRS Chapter 61 may classify as confidential or withhold from public
 22 inspection for such time as he or she considers necessary any information which, in
 23 his or her judgment, the public welfare or the welfare of any licensee or registrant
 24 or its customers requires to be so withheld. All investigations and information
 25 contained therein shall not be public until such time as the commissioner~~executive~~
 26 ~~director~~ makes all or part of the investigation public or the investigation is closed.

27 (2) The commissioner~~executive director~~ may classify as confidential certain records

1 and information obtained by the Department~~[Office]~~ of Financial Institutions when
 2 such matters are obtained from the Nationwide Mortgage Licensing System and
 3 Registry or from a governmental agency.

4 (3) The commissioner~~[executive director]~~ may classify as confidential and prohibit the
 5 disclosure of any request for documents or records submitted pursuant to KRS
 6 286.8-180, for such time as deemed necessary if, in the commissioner's~~[executive~~
 7 ~~director's]~~ judgment, the disclosure of said request for documents or records may
 8 impede or interfere with an ongoing investigation conducted pursuant to KRS
 9 286.8-140 or may cause the destruction or secreation of documents by the targeted
 10 party.

11 (4) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61,
 12 any information, documents, or material provided to or obtained from the
 13 Nationwide Mortgage Licensing System and Registry shall be subject to the
 14 confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage
 15 Licensing Act, Pub. L. No. 110-289, and amendments thereto.

16 ➔Section 781. KRS 286.8-160 is amended to read as follows:

17 (1) Every mortgage loan company and mortgage loan broker shall make and keep such
 18 accounts, correspondence, memoranda, papers, books, data, and other records used
 19 in the mortgage lending process as the commissioner~~[executive director]~~ prescribes,
 20 or that are required by federal law.

21 (2) The records governed in this subtitle shall be preserved for such time as the
 22 commissioner~~[executive director]~~ may by rule or order require, not to exceed a
 23 period of five (5) years after a mortgage loan application is completed, whether
 24 approved or rejected, or on mortgage loans paid in full, whichever is longer.
 25 Records shall be held for longer than five (5) years where federal law prescribes or
 26 supersedes this section.

27 (3) Records required to be preserved under this subtitle may be kept in an electronic

- 1 retrievable format, or other similar form of medium, that is readily accessible to
2 examination, investigation, and inspection by the commissioner~~[executive director]~~.
- 3 (4) Every mortgage loan company and mortgage loan broker shall file financial reports
4 as the commissioner~~[executive director]~~ prescribes.
- 5 (5) If the information contained in any document filed with the
6 commissioner~~[executive director]~~ is or becomes inaccurate or incomplete in any
7 material respect, the person who filed the document shall promptly file a correcting
8 amendment.
- 9 (6) Any person who ceases operating as a mortgage loan company or mortgage loan
10 broker under the provisions of this subtitle shall, prior to the discontinuance of
11 business in the residential mortgage lending process, notify the
12 commissioner~~[executive director]~~ of the physical location where the records
13 required to be kept under this subtitle will be preserved. The records shall be made
14 accessible to the commissioner~~[executive director]~~ upon five (5) business days'
15 written notice.
- 16 (7) Any person who ceases operating as a mortgage loan company or mortgage loan
17 broker under the provisions of this subtitle shall designate a custodian of records
18 and notify the commissioner~~[executive director]~~ of the name, physical address,
19 electronic mail address, and telephone number of the custodian of records. The
20 custodian of records shall preserve all records required under this subtitle and allow
21 the commissioner~~[executive director]~~ access to the records for examination and
22 investigation upon demand.
- 23 (8) Records may be maintained by a mortgage loan company or mortgage loan broker at
24 a location other than within this Commonwealth, so long as they are made
25 accessible to the commissioner~~[executive director]~~ upon five (5) business days'
26 written notice.
- 27 (9) The commissioner~~[executive director]~~ may approve a written request for the

1 destruction of records required to be preserved under this subtitle prior to the
 2 minimum retention period described in subsection (2) of this section.

3 ➔Section 782. KRS 286.8-170 is amended to read as follows:

4 (1) Every mortgage loan company and mortgage loan broker shall keep at its principal
 5 office correct and complete records of its business transactions, books of accounts,
 6 and minutes of proceedings of its directors, principals, or partners. Complete
 7 records of all business transactions at the principal office shall be maintained at the
 8 principal office. Each branch office shall keep detailed records of all transactions at
 9 such branch office and shall furnish full control records to the principal office.

10 (2) No mortgage loan company or mortgage loan broker by any system of accounting or
 11 any device of bookkeeping shall, either directly or indirectly, enter any of its assets
 12 upon its books in the name of any person, partnership, association, or corporation,
 13 or under any title, designation, or value that is not thoroughly descriptive of any
 14 assets.

15 (3) The affairs of every mortgage loan company, mortgage loan broker, mortgage loan
 16 originator, and mortgage loan processor, and the records required to be maintained
 17 by KRS 286.8-160 are subject at any time or from time to time to such periodic,
 18 special, or other examinations by the executive director or an examiner of the
 19 commissioner~~[executive director]~~ within or without this state and with or without
 20 notice to the person being examined, as the commissioner~~[executive director]~~
 21 deems necessary or appropriate in the public interest. All records of the person
 22 being examined shall be subject to the commissioner's~~[executive director's]~~
 23 inspection.

24 (4) The examiner shall make a thorough examination into the condition, workings and
 25 affairs of the person being examined and report any violation of law or any
 26 unauthorized unsafe practices or any failure to keep and have correct any required
 27 books and records as he or she may find to the commissioner~~[executive director]~~.

- 1 (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such
 2 examination of its operations or employees based on fair compensation for time and
 3 actual expense. For the purpose of avoiding unnecessary duplication of
 4 examinations, the commissioner~~[executive director]~~, insofar as he or she deems it
 5 practicable in administering this section, may cooperate and exchange information
 6 with any agency of the state or federal government, other states, the Nationwide
 7 Mortgage Licensing System and Registry, or the federal National Mortgage
 8 Association, Government National Mortgage Association, and Federal Home Loan
 9 Mortgage Corporation, and may accept such examinations in whole or in part in lieu
 10 of an examination by the commissioner~~[executive director]~~.
- 11 (6) The commissioner~~[executive director]~~ or the commissioner's~~[his]~~ examiners or
 12 designated representative shall have access to all records of a mortgage loan
 13 company, mortgage loan broker, mortgage loan originator, and mortgage loan
 14 processor which relate to their business, and records kept by any officers, agents, or
 15 employees, relating to or upon which any record of its business is kept.
- 16 (7) A mortgage loan originator or mortgage loan processor shall make available and
 17 grant access to the commissioner~~[executive director]~~, or an examiner of the
 18 commissioner~~[executive director]~~, the records relating to its operations. A mortgage
 19 loan company or mortgage loan broker shall make available and grant access to all
 20 records of its current and former employees and contractors relating to its
 21 operations.
- 22 (8) Any person subject to this subtitle shall make or compile reports or prepare other
 23 information as directed by the commissioner~~[executive director]~~ or an examiner of
 24 the commissioner~~[executive director]~~ to include:
- 25 (a) Accounting compilations;
- 26 (b) Information lists and data concerning loan transactions in a format prescribed
 27 by the commissioner~~[executive director]~~ or an examiner of the

1 commissioner~~{executive director}~~; and

2 (c) Such other information deemed necessary to carry out the purposes of this
3 section.

4 (9) No mortgage loan company, mortgage loan broker, mortgage loan originator, or
5 mortgage loan processor shall impede the commissioner~~{executive director}~~ or an
6 examiner of the commissioner~~{executive director}~~ from interviewing its officers,
7 principals, members, employees, independent contractors, agents, or customers.

8 (10) In making any examination or investigation authorized by this subtitle, the
9 commissioner~~{executive director}~~ may control access to any documents and records
10 of the licensee or person under examination or investigation. The
11 commissioner~~{executive director}~~ may take possession of the documents and
12 records, or place a person in exclusive charge of the documents and records in the
13 place where they are usually kept. During the period of control, no individual or
14 person shall remove or attempt to remove any of the documents and records except
15 pursuant to a court order or with the consent of the commissioner~~{executive~~
16 director}. Unless the commissioner~~{executive director}~~ has reasonable grounds to
17 believe the documents or records of the licensee have been, or are at risk of being,
18 altered or destroyed for purposes of concealing a violation of this subtitle, the
19 licensee or owner of the documents and records shall have access to the documents
20 or records as necessary to conduct its ordinary business affairs.

21 (11) It shall be unlawful for any person subject to investigation or examination under this
22 subtitle to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete
23 any books, records, or other information.

24 (12) In order to carry out the purposes of this subtitle, the commissioner~~{executive~~
25 director} may:

26 (a) Retain attorneys, accountants, or other professionals and specialists as
27 examiners, auditors, or investigators to conduct or assist in the conduct of

1 examinations or investigations;

2 (b) Enter into agreements or relationships with other government officials or
3 regulatory associations in order to improve efficiencies and reduce regulatory
4 burden by sharing resources, standardized or uniform methods or procedures,
5 and documents, records, information, or evidence obtained under this subtitle;
6 and

7 (c) Use, hire, contract, or employ public or privately available analytical systems,
8 methods, or software to examine or investigate the persons subject to this
9 subtitle.

10 (13) The authority of this section shall remain in effect, whether a person acts or claims
11 to act under any licensing or registration law of this subtitle, or claims to act without
12 such authority.

13 ➔Section 783. KRS 286.8-175 is amended to read as follows:

14 (1) Reports of examination, and correspondence that relates to the report of
15 examination, of a mortgage loan company or mortgage loan broker shall be
16 considered confidential information. No officer or director of a mortgage loan
17 company or mortgage loan broker, employee of the department~~[office]~~, or
18 employee of a state or federal regulatory authority shall release any information
19 contained in the examination, except when:

20 (a) Required in a proper legal proceeding in which a subpoena and protective
21 order insuring confidentiality has been issued by a court of competent
22 jurisdiction; or

23 (b) The information is referred to an appropriate prosecuting attorney for possible
24 criminal proceedings.

25 (2) The department~~[office]~~ may furnish to and exchange information and reports with
26 officials and examiners of other properly authorized state or federal regulatory
27 authorities.

- 1 (3) Every official report concerning a mortgage loan company or mortgage loan broker,
 2 and every report of examination, shall be prima facie evidence of the facts therein
 3 stated for all purposes in any action in which the department~~{office}~~, mortgage loan
 4 company, or mortgage loan broker is a party.

5 ➔Section 784. KRS 286.8-180 is amended to read as follows:

- 6 (1) In the conduct of any examination, investigation, or hearing, the
 7 commissioner~~{executive—director}~~ or an officer designated by the
 8 commissioner~~{him}~~ may compel the attendance of any person or obtain any
 9 documents by subpoenas; administer oaths or affirmations in the examination of the
 10 directors, officers, agents, employees of any mortgage loan company, or mortgage
 11 loan broker or any other person concerning the business and conduct of affairs or
 12 any person subject to the provisions of this subtitle, and in connection therewith
 13 may require and compel the production of any books, records, papers, or other
 14 documents relevant to the inquiry.

- 15 (2) In the contumacy by, or refusal to obey a subpoena issued to, any person, Franklin
 16 Circuit Court, upon application by the commissioner~~{executive director}~~, may issue
 17 to the person an order requiring him or her to appear before the
 18 commissioner~~{executive—director}~~, or the officer designated by the
 19 commissioner~~{him}~~, there to produce documentary evidence if so ordered or to give
 20 evidence touching the matter under investigation or in question. Failure to obey the
 21 order of the court may be punished by the court as a contempt of court.

- 22 (3) The cost of any investigation or hearing conducted under KRS 286.8-190 may be
 23 assessed to and collected from the mortgage loan company or mortgage loan broker
 24 in question by the commissioner~~{executive director}~~.

25 ➔Section 785. KRS 286.8-190 is amended to read as follows:

- 26 (1) The commissioner~~{executive director}~~ may investigate either upon complaint or
 27 otherwise when it appears that any person is conducting business in an unsafe and

injuriously manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.

(2) If it appears to the commissioner~~executive director~~ upon sufficient grounds or evidence satisfactory to the commissioner~~executive director~~ that any person has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that person's mortgage loan business affairs are in an unsafe condition, the commissioner~~executive director~~ may:

(a) Order the person to cease and desist from the acts or practices by a formal written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the commissioner~~executive director~~ within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the commissioner~~executive director~~ or terminated by a court order; and

(b) Apply directly to Franklin Circuit Court, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner~~executive director~~ shall not be required to post a bond.

→ Section 786. KRS 286.8-210 is amended to read as follows:

1 Any person aggrieved by final order of the commissioner~~[executive director]~~ may obtain
 2 a review of the order in Franklin Circuit Court, by filing in court, within sixty (60) days
 3 after the entry of the order, a written petition praying that the order be modified or set
 4 aside in whole or in part. A copy of the petition shall be forthwith served upon the
 5 commissioner~~[executive director]~~, and thereupon the commissioner~~[executive director]~~
 6 shall certify and file in court a copy of the filing, testimony, and other evidence upon
 7 which the order was entered. When these have been filed, the court has exclusive
 8 jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. No
 9 objection to the order may be considered by the court unless it was urged before the
 10 commissioner~~[executive director]~~ or there were reasonable grounds for failure to do so.
 11 The findings of the commissioner~~[executive director]~~ as to the facts, if supported by
 12 substantial evidence, are conclusive. If either party applies to the court for leave to adduce
 13 additional evidence, and shows to the satisfaction of the court that the additional evidence
 14 is material and that there were reasonable grounds for failure to adduce the evidence in
 15 the hearing before the commissioner~~[executive director]~~ the court may order the
 16 additional evidence to be taken before the commissioner~~[executive director]~~ and to be
 17 adduced upon the hearing in such manner and upon such conditions as the court may
 18 consider proper. The commissioner~~[executive director]~~ may modify his or her findings as
 19 to the facts, by reason of additional evidence so taken, and the commissioner~~[he]~~ shall
 20 file any modified or new findings, which if supported by substantial evidence shall be
 21 conclusive. The commencement of proceedings under this section does not, unless
 22 specifically ordered by the court, operate as a stay of the commissioner's~~[executive~~
 23 ~~director's]~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court
 24 upon any such appeal to the court of appeals on the same terms and conditions as an
 25 appeal is taken in civil actions.

26 ➔Section 787. KRS 286.8-220 is amended to read as follows:

27 (1) It shall be unlawful for any person to make or cause to be made, in any document

1 filed with the commissioner~~[executive director]~~, a governmental agency, the
 2 Nationwide Mortgage Licensing System and Registry, or in any proceeding under
 3 this subtitle, any statement that is, at the time and in light of the circumstances
 4 under which it is made, false or misleading in any material respect, including an
 5 omission of a material fact.

6 (2) It shall be unlawful for any person, in connection with a transaction involving the
 7 mortgage lending process, or in connection with the operation of a mortgage loan
 8 business or the management or servicing of mortgage loans, directly or indirectly:

9 (a) To employ a device, scheme, or artifice to defraud;

10 (b) To engage in any act, practice, or course of business that operates or would
 11 operate as a fraud or deceit upon any person;

12 (c) To fail to disburse funds in accordance with a loan commitment;

13 (d) To delay closing of any mortgage loan for the purpose of increasing interest,
 14 costs, fees, or charges payable by the borrower;

15 (e) Upon receipt of a customer's written request, to delay beyond five (5) business
 16 days the issuance of a written loan payoff amount or to delay beyond ten (10)
 17 business days the issuance of a payment history;

18 (f) To charge a fee for the issuance of an initial written loan payoff amount or
 19 payment history for each calendar quarter as set out in paragraph (e) of this
 20 subsection;

21 (g) To obtain property by fraud or misrepresentation;

22 (h) To fail to make disclosures as required by this subtitle or any other applicable
 23 state or federal law, including regulations thereunder; or

24 (i) To fail to comply with state or federal laws, including the rules and
 25 regulations thereunder, that are applicable to transacting business in Kentucky.

26 (3) Unless exempted by KRS 286.8-020(1), it shall be unlawful for any person to
 27 transact business in Kentucky unless it complies with the provisions of this subtitle.

(4) It shall be unlawful for any person to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person:

(a) Fails to state in the initial solicitation that the person is not affiliated with the mortgage loan company or mortgage loan broker with which the consumer initially applied;

(b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;

(c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or

(d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

➔Section 788. KRS 286.8-225 is amended to read as follows:

There is hereby created in the State Treasury a trust and revolving fund designated as the "mortgage fraud prosecution fund." All civil penalties or contributions directed by the commissioner~~executive director~~ to be transmitted to the mortgage fraud prosecution fund shall be deposited into the fund. Expenditures from the fund may be used for the investigation and criminal prosecution of fraudulent activities within the residential mortgage lending process, training related to prevention, detection, and investigation of mortgage fraud, and consumer education related to mortgage fraud. Only the commissioner~~executive director~~ of the Department~~Office~~ of Financial Institutions or the commissioner's~~executive director's~~ designee may authorize expenditures from the account. The money deposited in the fund is hereby appropriated for the uses set forth in

1 this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close
 2 of any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The
 3 fund may also receive additional state appropriations, gifts, grants, contributions, and
 4 federal funds. All interest earned on money in the fund shall be credited to the fund.

5 ➔Section 789. KRS 286.8-227 is amended to read as follows:

6 The commissioner~~[executive director]~~ is authorized through the collection of civil
 7 penalties or contributions to retain the funds collected for the purpose of depositing the
 8 funds into the mortgage fraud prosecution fund created in KRS 286.8-225. The funds
 9 shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the
 10 mortgage fraud prosecution fund created in KRS 286.8-225. The commissioner~~[executive~~
 11 ~~director]~~ of the Department~~[Office]~~ of Financial Institutions is responsible for the
 12 distribution of the funds in the mortgage fraud prosecution fund and shall, in consultation
 13 with the Attorney General and local prosecutors, develop administrative regulations for
 14 the use of these funds.

15 ➔Section 790. KRS 286.8-255 is amended to read as follows:

16 (1) No natural person shall transact business in Kentucky, either directly or indirectly,
 17 as a mortgage loan originator or mortgage loan processor unless such mortgage loan
 18 originator or mortgage loan processor is registered with the department~~[office]~~ and
 19 has been issued a current certificate of registration by the department~~[office]~~,
 20 complies with all applicable requirements of this subtitle, and maintains a valid
 21 unique identifier issued by the Nationwide Mortgage Licensing System and
 22 Registry. The department~~[office]~~ shall maintain a database of all mortgage loan
 23 originators and mortgage loan processors originating or processing mortgage loans
 24 on residential real property in Kentucky. The department~~[office]~~ shall issue a
 25 certificate of registration to all registered mortgage loan originators and mortgage
 26 loan processors.

27 (2) The application for registration shall:

- 1 (a) Be on a form prescribed by the commissioner~~[executive director]~~;
- 2 (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50)
- 3 which shall be used solely by the department~~[office]~~ to establish and maintain
- 4 a database of all mortgage loan originators and mortgage loan processors, and
- 5 any excess funds shall be retained by the department~~[office]~~ and shall not
- 6 lapse to the general fund; and
- 7 (c) Contain such information as the commissioner~~[executive director]~~ deems
- 8 necessary to carry out the purposes of this subtitle.
- 9 (3) (a) Applications for initial registrations of mortgage loan originators and
- 10 mortgage loan processors shall be accompanied by satisfactory evidence that
- 11 the applicant has successfully completed twenty (20) hours of prelicensing
- 12 education courses related directly to the mortgage lending process, as
- 13 approved and designated by the commissioner~~[executive director]~~.
- 14 (b) For the purposes of paragraph (a) of this subsection, the prelicensing
- 15 education courses approved and designated by the commissioner~~[executive~~
- 16 ~~director]~~ shall meet the minimum requirements set forth in Section 1505(c) of
- 17 the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments
- 18 thereto, and shall be reviewed, and approved by the Nationwide Mortgage
- 19 Licensing System and Registry.
- 20 (c) For the purposes of paragraph (a) of this subsection, the
- 21 commissioner~~[executive director]~~ may accept as credit towards the
- 22 completion of the prelicensing education requirements in this state, the
- 23 completion of prelicensing education requirements in any other state so long
- 24 as the education has met the requirements set forth in paragraphs (a) and (b) of
- 25 this subsection.
- 26 (4) Applications for renewals of certificates of registration by registered mortgage loan
- 27 originators and mortgage loan processors shall be accompanied by satisfactory

evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the department~~{office}~~ to establish and maintain a database of all mortgage loan originators and mortgage loan processors and any excess funds shall be retained by the department~~{office}~~ and shall not lapse to the general fund.

(5) A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year. Any certificate of registration that has expired may be reinstated by the commissioner~~{executive director}~~ upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.

(6) The department~~{office}~~ shall provide a registrant with a duplicate copy of any certificate of registration upon satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

(7) All mortgage loan originators and mortgage loan processors subject to the registration requirements of this section shall also be subject to and comply with all applicable provisions of this subtitle.

(8) The commissioner~~{executive director}~~ may require the submission of background records checks, including but not limited to checks for state, federal, and international criminal histories, civil or administrative records, and any other information as deemed necessary to comply with the minimum requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, as well as the submission of an independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting

1 Act, 15 U.S.C. sec. 1681a, as part of an application or renewal application filed
 2 under this subtitle. The cost of the background and records checks, and credit report
 3 shall be borne by the applicant.

4 (9) No mortgage loan originator or mortgage loan processor shall be granted or shall be
 5 entitled to maintain a certificate of registration unless he or she satisfies the
 6 following minimum standards for registration:

7 (a) The applicant has never had a loan originator's license or registration revoked
 8 in any governmental jurisdiction, except revocations that have been formally
 9 vacated or set aside shall not be deemed a revocation for the purposes of this
 10 section;

11 (b) The applicant has not been convicted of, pled guilty to, or pled nolo
 12 contendere to a felony in any domestic, foreign, or military court:

13 1. During the seven (7) year period preceding the date of the application for
 14 registration or renewal of registration; or

15 2. At any time preceding such date of application for registration or
 16 renewal of registration, if such felony involved an act of fraud or
 17 dishonesty, a breach of trust, or money laundering;

18 (c) The applicant has demonstrated financial responsibility, character, and general
 19 fitness such as to command the confidence of the community and to warrant a
 20 determination that the loan originator or loan processor will operate honestly,
 21 fairly, lawfully, and efficiently within the purposes of the subtitle;

22 (d) The applicant has completed the prelicensing education requirement set forth
 23 in subsection (3) of this section;

24 (e) The applicant has passed a qualified written test which satisfies the minimum
 25 requirements set forth in Section 1505(d) of the S.A.F.E. Mortgage Licensing
 26 Act, Pub. L. No. 110-289, and amendments thereto; and

27 (f) If required by KRS 286.8-060, the applicant holds or is covered by a surety

1 bond which satisfies the minimum requirements set forth in KRS 286.8-060.

2 (10) No mortgage loan originator or mortgage loan processor shall be granted a renewal
3 certificate of registration unless he or she satisfies the following minimum standards
4 for renewal of registration:

5 (a) The applicant has met and continues to meet the minimum standards set forth
6 in subsection (9) of this section; and

7 (b) The applicant has satisfied the annual continuing education requirements set
8 forth in KRS 286.8-260.

9 (11) The certificate of registration of any mortgage loan originator or mortgage loan
10 processor that fails to comply with the minimum standards for registration renewal
11 set forth in this section shall expire and shall promptly be deemed surrendered to the
12 commissioner~~executive director~~ without demand. The commissioner~~executive~~
13 ~~director~~ may adopt procedures and requirements for the reinstatement of expired
14 registrations consistent with the standards established by the Nationwide Mortgage
15 Licensing System and Registry.

16 (12) Mortgage loan originators engaging in any of the activities set forth in KRS 286.8-
17 010(21)(a) shall provide loan origination services to not more than one (1) mortgage
18 loan company or mortgage loan broker at a time.

19 ➔Section 791. KRS 286.8-260 is amended to read as follows:

20 (1) Any person required to be registered under this subtitle shall complete at least
21 twelve (12) hours of continuing professional education on an annual basis that is
22 approved and designated by the commissioner~~executive director~~. A minimum of
23 four (4) hours of continuing professional education at least once every two (2) years
24 shall be instruction on the requirements of this subtitle or KRS 360.100, or a
25 combination of both.

26 (2) For the purposes of subsection (1) of this section, the continuing professional
27 education courses approved and designated by the commissioner~~executive~~

1 ~~director~~ shall meet the minimum requirements set forth in Section 1505(b) of the
 2 S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.
 3 The education courses approved and designated by the commissioner~~executive~~
 4 ~~director~~ shall also be reviewed and approved by the Nationwide Mortgage
 5 Licensing System and Registry unless the Nationwide Mortgage Licensing System
 6 and Registry provides otherwise.

7 (3) For the purposes of subsection (1) of this section, the commissioner~~executive~~
 8 ~~director~~ may accept as credit towards the completion of the continuing professional
 9 education requirements in this state, the completion of continuing professional
 10 education requirements in any other state so long as the education has met the
 11 requirements set forth in subsections (1) and (2) of this section.

12 (4) For good cause shown, the commissioner~~executive director~~ may grant an
 13 extension during which the continuing education requirement of this section may be
 14 completed, but the extension may not exceed thirty (30) days. What constitutes
 15 good cause for the extension of time rests within the discretion of the
 16 commissioner~~executive director~~.

17 (5) The certificate of registration of any mortgage loan originator or mortgage loan
 18 processor that fails to comply with the continuing professional education
 19 requirements of this section and who has not been granted an extension of time to
 20 comply in accordance with subsection (4) of this section shall expire and shall
 21 promptly be deemed surrendered to the commissioner~~executive director~~ without
 22 demand.

23 ➔Section 792. 286.8-275 is amended to read as follows:

24 (1) Any person having knowledge or believing that a violation of this subtitle or any
 25 other illegal act or practice is being or has been committed may provide the
 26 commissioner~~executive director~~ a report of information pertinent to his or her
 27 knowledge or belief and any additional relevant information the

1 commissioner~~[executive director]~~ may request.

2 (2) Documents, materials, or other information in the possession or control of the
3 commissioner~~[executive director]~~ that is provided according to this section shall be
4 confidential by law, privileged, and shall not be subject to the Kentucky Open
5 Records Act, KRS 61.872 to 61.884. These documents, materials, or other
6 information shall not be subject to subpoena, and shall not be subject to discovery
7 or admissible as evidence in any civil action unless, after written notice to the
8 commissioner~~[executive director]~~ and a hearing, a court of competent jurisdiction
9 determines the commissioner~~[executive director]~~ would not be unduly prejudiced.

10 (3) Neither the commissioner~~[executive director]~~ nor any person who received
11 documents, materials, or other information while acting under the authority of the
12 commissioner~~[executive director]~~ shall be permitted or required to testify in any
13 civil action concerning any confidential documents, materials, or other information
14 subject to subsection (2) of this section.

15 (4) In order to assist in the performance of the commissioner's~~[executive director's]~~
16 duties, the commissioner~~[executive director]~~ may:

17 (a) Use the documents, materials, or other information in the furtherance of any
18 regulatory or legal action brought as part of the commissioner's~~[executive~~
19 ~~director's]~~ official duties;

20 (b) Share the documents, materials, or other information, including confidential
21 and privileged documents, materials, or other information subject to
22 subsections (2) and (3) of this section, with other state, federal, and
23 international law enforcement authorities or the Conference of State Bank
24 Supervisors or its affiliate if the recipient agrees to maintain the
25 confidentiality and privileged status of the documents, materials, and other
26 information; and

27 (c) Enter into agreements governing the sharing and use of information including

1 the furtherance of any regulatory or legal action brought as part of the
2 recipient's official duties.

3 (5) No waiver of any applicable privilege or claim of confidentiality in the documents,
4 materials, or information shall occur as a result of disclosure to the
5 commissioner~~executive director~~ under this section or as a result of sharing as
6 authorized in subsection (4) of this section.

7 ➔Section 793. KRS 286.8-280 is amended to read as follows:

8 (1) In the absence of malice, fraud, or negligence, a person shall not be subject to civil
9 liability for libel, slander, or any other relevant tort by virtue of filing reports or
10 furnishing other information required by this subtitle or requested by the
11 commissioner~~executive director~~.

12 (2) This section shall not abrogate or modify any common law or statutory privileges or
13 immunity enjoyed by any person.

14 ➔Section 794. KRS 286.8-285 is amended to read as follows:

15 (1) (a) In addition to other duties imposed upon the commissioner~~executive~~
16 ~~director~~ in this subtitle, the commissioner~~executive director~~ shall be
17 authorized to participate in the establishment and implementation of the
18 Nationwide Mortgage Licensing System and Registry and to implement and
19 comply with the minimum requirements set forth in the S.A.F.E. Mortgage
20 Licensing Act, Pub. L. No. 110-289, and amendments thereto.

21 (b) For such purpose, the commissioner~~executive director~~ is authorized to
22 waive or modify, in whole or in part, by rule or by order, any or all of the
23 requirements of this subtitle and to establish new requirements as reasonably
24 necessary to carry out the purpose of this section.

25 (c) The commissioner~~executive director~~ shall have authority to establish
26 relationships or contracts with other governmental agencies, the Nationwide
27 Mortgage Licensing System and Registry, or entities affiliated with the system

1 that are necessary to carry out the purpose of this section.

2 (d) The commissioner~~{executive director}~~ may establish interim procedures to
3 promote and establish an orderly and efficient transition for the registration,
4 review, and acceptance of new applications. The commissioner~~{executive~~
5 ~~director}~~ may also establish interim procedures and expedited review and
6 registration procedures for previously registered individuals.

7 (e) The commissioner~~{executive director}~~ may use the Nationwide Mortgage
8 Licensing System and Registry as an agent for receiving, requesting, and
9 distributing information to and from any source so directed by the
10 commissioner~~{executive director}~~.

11 (2) The commissioner~~{executive director}~~ shall establish a process whereby licensees
12 may challenge information entered into the Nationwide Mortgage Licensing System
13 and Registry by the commissioner~~{executive director}~~.

14 (3) The commissioner~~{executive director}~~ shall annually request audited financial
15 reports, including inquiring as to the budget and fees collected, both proposed and
16 actual, from the Nationwide Mortgage Licensing System and Registry.

17 (4) The commissioner~~{executive director}~~ shall annually request any nonconfidential
18 protocols or reports for the security and safeguarding of personal information
19 maintained by the Nationwide Mortgage Licensing System and Registry, including
20 the following:

21 (a) Inquiring as to whether the system has implemented and complied with the
22 data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C.
23 sec. 6801;

24 (b) Inquiring as to the results of any nonconfidential periodic data protection
25 audits that the system may conduct; and

26 (c) Inquiring as to whether any security breaches have occurred resulting in the
27 substantial likelihood that personal information may be misused or stolen.

- 1 (5) The commissioner~~[executive-director]~~ shall annually request from the Nationwide
 2 Mortgage Licensing System and Registry the following statistical information, if
 3 available, relating to the examinations taken by applicants seeking registration as a
 4 loan originator in Kentucky during the preceding calendar year:
- 5 (a) The total number of tested individuals, along with any relevant demographic
 6 information available such as race, ethnicity, or gender;
 - 7 (b) The total number of individuals who received a passing score on the
 8 examination, along with any relevant demographic information available such
 9 as race, ethnicity, or gender;
 - 10 (c) The total number of individuals who did not receive a passing score on the
 11 examination, along with any relevant demographic information available such
 12 as race, ethnicity, or gender; and
 - 13 (d) All mean, average, or scaled scoring data.
- 14 (6) When requested by the General Assembly, the commissioner~~[executive-director]~~
 15 shall review and report to the General Assembly the content of any information
 16 received from the Nationwide Mortgage Licensing System and Registry pursuant to
 17 subsection (3), (4), or (5) of this section.
- 18 (7) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61,
 19 the commissioner~~[executive-director]~~ shall regularly report violations of this
 20 subtitle, as well as enforcement actions and other relevant information, to the
 21 Nationwide Mortgage Licensing System and Registry.
- 22 ➔Section 795. KRS 286.8-290 is amended to read as follows:
- 23 (1) The following mortgage loan originators shall be subject to subsections (3) and (4)
 24 of this section, but shall be exempt from the registration and regulatory
 25 requirements of KRS 286.8-255:
- 26 (a) An individual employed by the following institutions and acting on behalf of
 27 such institutions:

- 1 1. A depository institution;
- 2 2. A subsidiary that is:
 - 3 a. Owned and controlled by a depository institution; and
 - 4 b. Regulated by the Board of Governors of the Federal Reserve
 - 5 System, the Comptroller of the Currency, the Director of the
 - 6 Office of Thrift Supervision, the National Credit Union
 - 7 Administration, or the Federal Deposit Insurance Corporation; or
- 8 3. An institution regulated by the Farm Credit Administration;
- 9 (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a
 - 10 client as an ancillary matter to the attorney's representation of the client,
 - 11 unless the attorney is compensated by a mortgage loan company, mortgage
 - 12 loan broker, or other mortgage loan originator, or by an agent of such
 - 13 company, broker, or other originator;
- 14 (c) A natural person who originates a mortgage loan on behalf of an immediate
 - 15 family member of the natural person unless the natural person is compensated
 - 16 in connection with that transaction by a mortgage loan company, mortgage
 - 17 loan broker, or other mortgage loan originator, or by an agent of such
 - 18 company, broker, or other originator; and
- 19 (d) A natural person who originates a mortgage loan secured by a dwelling that
 - 20 served as the natural person's residence unless the natural person is
 - 21 compensated in connection with that transaction by a mortgage loan company,
 - 22 mortgage loan broker, or other mortgage loan originator, or by an agent of
 - 23 such company, broker, or other originator.
- 24 (2) The following mortgage loan processors shall be subject to subsections (3) and (4)
 - 25 of this section, but shall be exempt from the registration and regulatory
 - 26 requirements of KRS 286.8-255:
 - 27 (a) Any natural person exempted in subsection (1) of this section; and

1 (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a),
 2 (b), (c), (d), (e), (f), or (g) and acting on behalf of such person.

3 (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no
 4 mortgage loan originator or mortgage loan processor shall impede the
 5 commissioner~~[executive-director]~~ or an examiner of the commissioner~~[executive~~
 6 ~~director]~~ from interviewing any person regarding any potential violations of this
 7 subtitle.

8 (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every
 9 mortgage loan originator and mortgage loan processor shall make available and
 10 grant access to the commissioner~~[executive-director]~~ or an examiner of the
 11 commissioner~~[executive-director]~~ the records in the originator's or processor's
 12 possession or control that are subject to the provisions of this subtitle.

13 ➔Section 796. KRS 286.8-990 is amended to read as follows:

14 (1) This section shall be known and cited as the "Kentucky Residential Mortgage Fraud
 15 Act."

16 (2) A person is guilty of residential mortgage fraud when, with the intent to defraud,
 17 that person does any of the following in connection with the mortgage lending
 18 process:

19 (a) Employs a device, scheme, or artifice to defraud;

20 (b) Engages in any act, practice, or course of business that operates or would
 21 operate as a fraud or deceit upon any person;

22 (c) Fails to disburse funds in accordance with a loan commitment;

23 (d) Knowingly makes or attempts to make any material misstatement,
 24 misrepresentation, or omission within the mortgage lending process with the
 25 intention that a mortgage lender, mortgage broker, borrower, or any other
 26 person or entity involved in the mortgage lending process relies on it;

27 (e) Knowingly uses or facilitates or attempts to use any misstatement,

1 misrepresentation, or omission within the mortgage lending process with the
 2 intention that a mortgage lender, borrower, or any other person or entity
 3 involved in the mortgage lending process relies on it;

4 (f) Receives or attempts to receive proceeds or any other funds in connection
 5 with a residential mortgage closing that the person knew, or should have
 6 known, resulted from a violation of paragraph (a), (b), (c), (d), or (e) of this
 7 subsection;

8 (g) Knowingly causes to be filed with the commissioner~~executive director~~ or in
 9 any proceeding under this subtitle any document that is, at the time and in the
 10 light of the circumstances under which it is made, false or misleading in any
 11 material respect; or

12 (h) Conspires or solicits another to violate any of the provisions of this
 13 subsection.

14 (3) It shall be sufficient in any prosecution under this section for residential mortgage
 15 fraud to show that the party accused acted with the intent to deceive or defraud. It
 16 shall be unnecessary to show that any particular person or entity was harmed
 17 financially in the transaction or that the person or entity to whom the deliberate
 18 misstatement, misrepresentation, or omission was made relied upon the
 19 misstatement, misrepresentation, or omission.

20 (4) In any criminal proceeding brought under this section, the crime shall be construed
 21 to have been committed:

22 (a) In the county in which the residential real property for which a mortgage loan
 23 is being sought is located;

24 (b) In any county in which any act was performed in furtherance of the violation;

25 (c) In any county in which any person alleged to have violated this section had
 26 control or possession of any proceeds of the violation;

27 (d) If a closing occurred, in any county in which the closing occurred; or

- 1 (e) In any county in which a document containing a deliberate misstatement,
2 misrepresentation, or omission is filed with the official registrar of deeds or
3 with the Division of Motor Vehicles.
- 4 (5) Upon referral by the commissioner~~executive director~~, the Kentucky Real Estate
5 Commission, the Attorney General, the Kentucky Board of Appraisers, or other
6 parties; or upon its own investigation of available evidence concerning any violation
7 of this subtitle; the proper Commonwealth's attorney or district attorney may
8 institute the appropriate criminal proceedings under this section.
- 9 (6) Unless the conduct is prohibited by some other provision of law providing for
10 greater punishment, a violation of this section involving a mortgage loan is a Class
11 D felony for the first or second offense and a Class C felony for each subsequent
12 offense.
- 13 (7) (a) All real and personal property of every kind used or intended for use in the
14 course of, derived from, or realized through a violation of this section shall be
15 subject to forfeiture to the Commonwealth. However, the forfeiture of any real
16 or personal property shall be subordinate to any security interest in the
17 property taken by a lender in good faith as collateral for the extension of credit
18 and recorded as provided by law, and no real or personal property shall be
19 forfeited under this section against an owner who made a bona fide purchase
20 of the property without knowledge of a violation of this section.
- 21 (b) In addition to the provisions of paragraph (a) of this subsection, courts may
22 order restitution to any person who has suffered a financial loss due to
23 violation of this section.
- 24 (8) In the absence of fraud, bad faith, or malice, a person shall not be subject to an
25 action for civil liability for filing reports or furnishing other information regarding
26 suspected residential mortgage fraud to a regulatory or law enforcement agency.
- 27 (9) Nothing in this subtitle shall limit the powers of the state to punish any person for

1 any conduct that constitutes a crime.

2 (10) The court may assess a fine of not less than one thousand dollars (\$1,000) nor more
3 than five thousand dollars (\$5,000,) against any person who is convicted of
4 violating any provision of this section.

5 (11) Any person who knowingly engages in the business of residential mortgage lending
6 regulated by this subtitle without first securing a license or registration therefore
7 shall be guilty of a Class A misdemeanor.

8 ➔Section 797. KRS 286.9-010 is amended to read as follows:

9 As used in this subtitle, unless the context requires otherwise:

10 (1) "Affiliate" means a person who directly or indirectly through one (1) or more
11 intermediaries controls or is controlled by, or is under common control with, a
12 licensee;

13 (2) "Applicant" means a person filing an application or renewal application for a license
14 under this subtitle;

15 (3) "Archive" means to copy data to a long-term storage mechanism apart from the
16 database;

17 (4) "Cashing" means providing currency for a payment instrument;

18 (5) "Check" means any check, draft, money order, personal money order, travelers'
19 check, or other demand instrument for the transmission or payment of money;

20 (6) "Closed" or "close" means that one (1) of the following has occurred in connection
21 with a deferred deposit service transaction concerning the customer's payment
22 instrument:

23 (a) The payment instrument is redeemed by the customer by payment to the
24 licensee of the face amount of the payment instrument in cash;

25 (b) The payment instrument is exchanged by the licensee for a cashier's check or
26 cash from the customer's financial institution;

27 (c) The payment instrument is deposited by the licensee, and the licensee has

- 1 evidence that the person has satisfied the obligation;
- 2 (d) The payment instrument is collected by the licensee or its agent through any
- 3 civil remedy available under the laws of this state; or
- 4 (e) Any other reason that the commissioner~~executive director~~ may deem to be
- 5 proper under this subtitle;
- 6 (7) "Consideration" means any premium or fee charged of any kind for the sale of
- 7 goods or services in excess of the cash price of the goods or services;
- 8 (8) "Control" means:
- 9 (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent
- 10 (25%) or more of a class of voting securities or voting interests of a licensee
- 11 or applicant, or the person in control of a licensee or applicant;
- 12 (b) The power to elect a majority of executive officers, managers, directors,
- 13 trustees, or other persons exercising managerial authority over a licensee or
- 14 applicant, or the person in control of a licensee or applicant; or
- 15 (c) The power to exercise, directly or indirectly, a controlling influence over the
- 16 management or policies of a licensee or applicant, or the person in control of a
- 17 licensee or applicant;
- 18 (9) "Customer" means a person who inquires into the availability of or applies for a
- 19 deferred presentment service transaction or a person who enters into a deferred
- 20 presentment service transaction;
- 21 (10) "Customer transaction data" means all data reported to the database pertinent to a
- 22 particular customer transaction, including the date of the transaction, identification
- 23 of the licensee and location, the sum of money involved, the time payment is
- 24 deferred, fees charged, any alleged violations of this subtitle, and any identifying
- 25 customer information;
- 26 (11) "Database" means the database described in KRS 286.9-140;
- 27 (12) "Database provider" means one (1) of the following:

- 1 (a) A third-party provider selected by the commissioner~~[executive-director]~~ under
 2 KRS 286.9-140 to operate the statewide database described in that section; or
- 3 (b) The commissioner~~[executive-director]~~, if the commissioner~~[executive~~
 4 ~~director]~~ has not selected a third-party provider under KRS 286.9-140;
- 5 (13) "Deferred deposit service business" means a person who engages in deferred deposit
 6 transactions;
- 7 (14) "Deferred deposit transaction" or "deferred presentment service transaction" means,
 8 for consideration, accepting a payment instrument, and holding the payment
 9 instrument for a period of time prior to deposit or presentment in accordance with
 10 an agreement with or any representation made to the customer whether express or
 11 implied;
- 12 (15) "Delete" means to erase data by overwriting the data;
- 13 (16) "Commissioner~~[Executive-director]~~" means the commissioner~~[executive-director]~~
 14 of the Department~~[Office]~~ of Financial Institutions;
- 15 (17) "Identifying customer information" means the name of the customer, his or her
 16 Social Security number, driver license number, or other state-issued identification
 17 number, address, any account numbers or information specific to a payment
 18 instrument provided by a customer to a licensee, a bank, savings bank, savings and
 19 loan association, or credit union, and any other nonpublic, personal financial
 20 information of a customer entered into the database or that comes into the
 21 possession of the database provider through customer or licensee inquiry or report;
- 22 (18) "Licensee" means a person duly licensed by the commissioner~~[executive-director]~~
 23 under this subtitle to conduct check cashing or deferred deposit service business in
 24 the Commonwealth;
- 25 (19) "Maturity date" means the date on which a payment instrument is authorized to be
 26 redeemed or presented for payment;
- 27 (20) "Department~~[Office]~~" means the Department~~[Office]~~ of Financial Institutions;

(21) "Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable; and

(22) "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity however organized.

➔Section 798. KRS 286.9-020 is amended to read as follows:

Except as provided in KRS 286.9-030, no person shall engage in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license. A separate license shall be required for each location from which the business of cashing checks or accepting deferred deposit transactions is conducted. Any person engaged in that business on the effective date of this section may continue to engage in the business without a license until the commissioner~~executive director~~ shall have acted upon his or her application for a license if the application is filed within sixty (60) days after April 14, 1998.

➔Section 799. KRS 286.9-035 is amended to read as follows:

(1) Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.

(2) The commissioner~~executive director~~ may void a deferred deposit transaction agreement when it is determined by the commissioner~~executive director~~ that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.

(3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

1 ➔ Section 800. KRS 286.9-040 is amended to read as follows:

2 To qualify for a license, an applicant shall satisfy the following requirements:

3 (1) The applicant shall deposit with the commissioner~~[executive director]~~ one (1) of
4 the following instruments:

5 (a) An irrevocable letter of credit in the following amounts:

6 1. If an applicant has only one (1) business location, the amount shall be
7 fifty thousand dollars (\$50,000);

8 2. If an applicant has two (2) to five (5) business locations, the amount
9 shall be one hundred thousand dollars (\$100,000);

10 3. If an applicant has six (6) to ten (10) business locations, the amount
11 shall be one hundred fifty thousand dollars (\$150,000);

12 4. If an applicant has eleven (11) to twenty (20) business locations, the
13 amount shall be two hundred thousand dollars (\$200,000);

14 5. If an applicant has twenty-one (21) to thirty (30) business locations, the
15 amount shall be three hundred thousand dollars (\$300,000);

16 6. If an applicant has thirty-one (31) to forty (40) business locations, the
17 amount shall be four hundred thousand dollars (\$400,000); and

18 7. If an applicant has more than forty (40) business locations, the amount
19 shall be five hundred thousand dollars (\$500,000);

20 (b) A corporate surety bond made payable to the commissioner~~[executive~~
21 ~~director]~~ in the same amount that is required in paragraph (1)(a) of this
22 section;

23 (c) Evidence that the applicant has established an account payable to the
24 commissioner~~[executive director]~~ in a federally insured financial institution in
25 this state and has deposited money of the United States in an amount equal to
26 the amount of the required letter of credit; or

27 (d) A savings certificate of a federally insured financial institution in this state for

1 an amount payable that is equal to the amount of the required letter of credit
 2 and that is not available for withdrawal except by direct order of the
 3 commissioner~~[executive director]~~. Interest earned on the certificate accrues to
 4 the applicant.

5 (2) Every instrument required in this section shall provide for suit thereon by any
 6 person who has a cause of action under this subtitle. The total liability of the surety,
 7 to all persons, cumulative or otherwise, shall not exceed the amount specified in the
 8 bond.

9 (3) Every instrument required in this section shall be made payable to the
 10 commissioner~~[executive director]~~.

11 (4) Every instrument required in this section shall be available for the recovery of
 12 expenses, fines, and fees levied by the commissioner~~[executive director]~~ under this
 13 subtitle, and for losses or damages that are determined by the
 14 commissioner~~[executive director]~~ to have been incurred by any customer as a result
 15 of the applicant's or licensee's failure to comply with the requirements of this
 16 subtitle.

17 (5) Every instrument required in this section shall provide that no suit shall be
 18 maintained to enforce any liability on the bond unless brought within three (3) years
 19 after the act upon which it is based.

20 (6) The financial responsibility, financial condition, business experience, character, and
 21 general fitness of the applicant shall reasonably warrant the belief that the
 22 applicant's business will be conducted honestly, carefully, and efficiently. In
 23 determining whether this qualification has been met, the commissioner~~[executive~~
 24 director] may review and approve:

- 25 (a) The business record and the capital adequacy of the applicant;
- 26 (b) The competence, experience, integrity, and financial ability of any person
- 27 who:

- 1 1. Is a director, officer, supervisory employee, or five percent (5%) or more
- 2 shareholder of the applicant; or
- 3 2. Owns or controls the applicant; and
- 4 (c) Any record, on the part of the applicant or any person referred to in
- 5 subparagraph (b)1. and 2. of:
- 6 1. Any criminal activity;
- 7 2. Any fraud or other act of personal dishonesty;
- 8 3. Any act, omission, or practice which constitutes a breach of a fiduciary
- 9 duty; or
- 10 4. Any suspension, revocation, or removal, by any agency or department of
- 11 the United States or any state, from participation in the conduct of any
- 12 business.

13 ➔Section 801. KRS 286.9-050 is amended to read as follows:

14 Each application for a license shall be in writing and under oath to the
 15 department~~{office}~~, in a form prescribed by the commissioner~~{executive director}~~, and
 16 shall include the following:

- 17 (1) The legal name, residence, and business address of the applicant and, if the
- 18 applicant is a partnership, association, or corporation, of every member, officer, and
- 19 director thereof;
- 20 (2) The location at which the initial registered office of the applicant shall be located in
- 21 this Commonwealth;
- 22 (3) The complete address of any locations at which the applicant proposes to engage in
- 23 the business of cashing checks; and
- 24 (4) Other data and information the department~~{office}~~ may require with respect to the
- 25 applicant, its directors, trustees, officers, members, or agents.

26 ➔Section 802. KRS 286.9-060 is amended to read as follows:

27 Each application for a license shall be accompanied by:

- 1 (1) An investigation fee of five hundred dollars (\$500) for Kentucky residents and five
 2 hundred dollars (\$500) for nonresidents of Kentucky for each location which shall
 3 not be subject to refund but which, if the license is granted, shall constitute the
 4 license fee for the first license year or part thereof;
 - 5 (2) Audited financial statements prescribed by the commissioner~~[executive director]~~;
 6 and
 - 7 (3) Evidence that the applicant has complied or will comply with all workers', and
 8 unemployment compensation laws of Kentucky.
- 9 ➔Section 803. KRS 286.9-070 is amended to read as follows:
- 10 (1) Upon the filing of a completed application in a form prescribed by the
 11 commissioner~~[executive director]~~, accompanied by the fee and documents required
 12 in KRS 286.9-060, the commissioner~~[executive director]~~ shall investigate to
 13 ascertain whether the qualifications prescribed by KRS 286.9-040 have been
 14 satisfied. If the commissioner~~[executive director]~~ finds that the qualifications have
 15 been satisfied, and if the commissioner~~[executive director]~~ approves the
 16 documents, he or she shall issue to the applicant a license to engage in the business
 17 of cashing checks or deferred deposit transactions in this Commonwealth.
 - 18 (2) The license shall be kept conspicuously posted in the place of business of the
 19 licensee.
 - 20 (3) A license issued under this section shall remain in force and effect through the
 21 remainder of the fiscal year ended June 30 following its date of issuance, unless
 22 surrendered, suspended, or revoked under this subtitle. A license issued under this
 23 subtitle shall expire by June 30 following the date of its issuance unless renewed by
 24 the filing of a completed renewal application and payment of the required fees with
 25 the commissioner~~[executive director]~~.
 - 26 (4) A licensee shall notify the commissioner~~[executive director]~~ in writing at least
 27 fifteen (15) business days before any change in the licensee's business location or

1 name.

2 (5) A licensee shall file a written request for a change of control of that licensee with
 3 the commissioner~~[executive director]~~ at least fifteen (15) business days prior to any
 4 change of control of the licensee. The commissioner~~[executive director]~~ may
 5 require additional information considered necessary to determine whether a new
 6 application for a license is required. The person who requests the approval for a
 7 change of control shall pay the cost incurred by the commissioner~~[executive~~
 8 ~~director]~~ in investigating the change of control request.

9 (6) A license issued under this subtitle shall be transferable or assignable in cases of
 10 ownership changes of the business or to facilitate the transfer or assignment of a
 11 license if the licensee is closing an alternate office location, subject to approval of
 12 the commissioner~~[executive director]~~ and based on existing criteria of new
 13 applicant approvals in accordance with this section.

14 (7) The commissioner~~[executive director]~~ may deem an application or renewal
 15 application abandoned when the application received is incomplete and the
 16 applicant fails to provide any required information or fee under this subtitle or fails
 17 to respond to a request by the commissioner~~[executive director]~~ for further
 18 information.

19 ➔Section 804. KRS 286.9-071 is amended to read as follows:

20 The commissioner~~[executive director]~~ shall not issue additional deferred deposit service
 21 business licenses for a period of ten (10) years after July 1, 2009.

22 ➔Section 805. KRS 286.9-073 is amended to read as follows:

23 Every person licensed under this subtitle shall maintain an agent in this Commonwealth
 24 for service of process. The name, address, telephone number, and electronic mail address
 25 of the agent shall be filed with the application. The commissioner~~[executive director]~~
 26 shall be notified in writing by the licensee at least five (5) days prior to any change in the
 27 status of an agent.

1 ➔Section 806. KRS 286.9-074 is amended to read as follows:

- 2 (1) Each licensee shall keep and use in its business any books, accounts, financial
3 reports, and records the commissioner~~[executive director]~~ may require to
4 administer and regulate the provisions of this subtitle and the administrative
5 regulations promulgated under this subtitle. Every licensee shall preserve the books,
6 accounts, financial reports, and records for a minimum of three (3) years, unless
7 applicable state or federal law requires a longer retention period.
- 8 (2) Records required to be preserved under this section may be maintained in an
9 electronic retrievable format, or other similar form of medium, provided that it is
10 readily accessible to examination, investigation, and inspection by the
11 commissioner~~[executive director]~~.
- 12 (3) Any person who ceases operating a business licensed under this subtitle shall, at
13 least thirty (30) days prior to the discontinuance of the business, notify the
14 commissioner~~[executive director]~~ in writing of the physical location where the
15 records required to be kept under this subtitle will be preserved or archived. The
16 records shall be made accessible to the commissioner~~[executive director]~~ upon five
17 (5) business days' written notice.
- 18 (4) Any person who ceases operating as a business licensed under this subtitle shall
19 designate a custodian of records and notify the commissioner~~[executive director]~~ of
20 the name, physical address, electronic mail address, and telephone number of the
21 custodian of records. The custodian of records shall preserve all records required
22 under this subtitle and allow the commissioner~~[executive director]~~ access to the
23 records for examination and investigation upon demand.
- 24 (5) The commissioner~~[executive director]~~ may approve a written request for the
25 destruction of records required to be preserved under this subtitle prior to the
26 minimum retention period described in subsection (1) of this section.

27 ➔Section 807. KRS 286.9-075 is amended to read as follows:

- 1 (1) Any person aggrieved by the conduct of a licensee under this subtitle in connection
 2 with the licensee's regulated activities may file a written complaint with the
 3 commissioner~~[executive-director]~~ who may investigate the complaint.
- 4 (2) In the course of the investigation initiated by a complaint or by the
 5 commissioner~~[executive-director]~~, the commissioner~~[executive-director]~~ may:
 6 (a) Subpoena witnesses;
 7 (b) Administer oaths;
 8 (c) Examine any individual under oath; and
 9 (d) Compel the production of records, books, papers, contracts, or other
 10 documents relevant to the investigation.
- 11 (3) If any person fails to testify or to comply with a subpoena from the
 12 commissioner~~[executive-director]~~ under this section, the commissioner~~[executive~~
 13 ~~director]~~ may petition any court of competent jurisdiction for enforcement.
- 14 (4) The license of any licensee under this subtitle who fails to comply with a subpoena
 15 of the commissioner~~[executive-director]~~ may be suspended pending compliance
 16 with the subpoena.
- 17 (5) The commissioner~~[executive-director]~~ shall have administrative power to
 18 investigate all complaints filed by any person if the complaints are not criminal in
 19 nature and if they relate to the check cashing or the deferred deposit service
 20 business.
- 21 ➔Section 808. KRS 286.9-080 is amended to read as follows:
- 22 (1) Each license may be renewed for the ensuing twelve (12) months period upon the
 23 timely submission of a completed renewal application and payment to the
 24 commissioner~~[executive-director]~~ annually on or before June 20 of each year a
 25 license fee of five hundred dollars (\$500) for the first location and five hundred
 26 dollars (\$500) for each additional location.
- 27 (2) The commissioner~~[executive-director]~~ may reinstate a license that has expired

1 within thirty-one (31) days of the expiration of the license if the licensee pays a late
 2 fee in the amount of one hundred dollars (\$100) and a reinstatement fee of five
 3 hundred dollars (\$500).

- 4 (3) A license shall not be reinstated where the renewal application, fees, or any required
 5 information is received on or after August 1 of the year that the application was due.

6 ➔Section 809. KRS 286.9-090 is amended to read as follows:

- 7 (1) The commissioner~~[executive-director]~~ may adopt reasonable administrative
 8 regulations, not inconsistent with law, for the enforcement of this subtitle.

- 9 (2) To assure compliance with the provisions of this subtitle, the
 10 commissioner~~[executive-director]~~ may examine the business, books, and records of
 11 any licensee, and each licensee shall pay an examination fee sufficient to cover the
 12 cost of the examination based upon fair compensation for time and actual expense
 13 as established by order or administrative regulations.

- 14 (3) The affairs of every check cashing and deferred deposit service business licensee
 15 and the records required to be maintained by KRS 286.9-074 are subject at any
 16 time, or from time to time, to such periodic, special, or other examinations by the
 17 commissioner~~[executive-director]~~ or an examiner of the commissioner~~[executive~~
 18 ~~director]~~ within or without this state and with or without notice to the licensee, as
 19 the commissioner~~[executive-director]~~ deems necessary or appropriate in the public
 20 interest. All books, papers, and records of assets of the licensee shall be subject to
 21 the commissioner's~~[executive-director's]~~ inspection.

- 22 (4) Reports of examination, related working papers, or other confidential information in
 23 the possession or control of the commissioner~~[executive-director]~~ that is provided
 24 according to this subtitle shall be confidential by law and privileged, and shall not
 25 be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These reports
 26 of examination, related working papers, or other confidential information shall not
 27 be subject to subpoena, and shall not be subject to discovery or admissible in

evidence in any civil action, unless after notice to the commissioner~~[executive director]~~ and a hearing, a court of competent jurisdiction determines that the commissioner~~[executive director]~~ would not be prejudiced. However, the commissioner~~[executive director]~~ may use such reports, working papers, and other confidential information in the furtherance of any regulatory or legal action brought as a part of the commissioner~~[executive director's]~~ official duties.

(5) Neither the commissioner~~[executive director]~~ nor any person who received documents, materials, reports, or other information while acting under the authority of the commissioner~~[executive director]~~ shall be required to testify in any civil action concerning any reports of examination, related working papers, or other confidential information subject to subsection (4) of this section.

(6) In order to assist in the performance of the commissioner~~[executive director's]~~ duties, the commissioner~~[executive director]~~ may:

(a) Share documents, materials, annual reports, reports of examination or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (4) and (5) of this section, with other state, federal, and international regulatory agencies, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;

(b) Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or

1 information;

2 (c) Enter into agreements governing the sharing and use of information, including
3 the furtherance of any regulatory or legal action brought as part of the
4 recipient's official duties;

5 (d) Disclose to the public a list of persons licensed under this subtitle or the
6 aggregate financial data concerning those licensees; and

7 (e) Disclose to the public any order issued under this subtitle that is the result of
8 an administrative or legal action against a licensee, agent of a licensee,
9 responsible individual, key shareholder, executive officer, or director.

10 (7) No waiver of any applicable privilege or claim of confidentiality in the documents,
11 materials, reports, or information shall occur as a result of disclosure to the
12 commissioner~~executive director~~ under this subsection or as a result of sharing as
13 authorized in subsection (6) of this section.

14 ➔Section 810. KRS 286.9-100 is amended to read as follows:

15 (1) Any fee charged by a licensee for cashing a check or entering into a deferred deposit
16 transaction shall be disclosed in writing to the bearer of the check prior to cashing
17 the check or entering into a deferred deposit transaction, and the fee shall be
18 deemed a service fee and not interest. A licensee shall not charge a service fee in
19 excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of
20 the deferred deposit check. A licensee shall prorate any fee, based upon the
21 maximum fee of fifteen dollars (\$15) per one hundred dollars (\$100). This service
22 fee shall be for a period of at least fourteen (14) days.

23 (2) Before a licensee shall deposit with any bank or other depository institution a check
24 cashed by the licensee, the check shall be endorsed with the actual name under
25 which the licensee is doing business.

26 (3) No licensee shall cash a check payable to a payee other than a natural person unless
27 the licensee has previously obtained appropriate documentation from the board of

- 1 directors or similar governing body of the payee clearly indicating the authority of
2 the natural person or persons cashing the check, draft, or money order on behalf of
3 the payee.
- 4 (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that
5 checks may be cashed without identification of the bearer of the check; and any
6 person seeking to cash a check shall be required to submit reasonable identification
7 as prescribed by the commissioner~~[executive director]~~. The provisions of this
8 subsection shall not prohibit a licensee from cashing a check simultaneously with
9 the verification and establishment of the identity of the presenter by means other
10 than the presentation of identification.
- 11 (5) Within two (2) business days after being advised by a financial institution that a
12 payment instrument has been altered, forged, stolen, obtained through fraudulent or
13 illegal means, negotiated without proper legal authority, or otherwise represents the
14 proceeds of illegal activity, the licensee shall notify the commissioner~~[executive~~
15 ~~director]~~ and the prosecutor or law enforcement authority in the county in which the
16 check was received. If a payment instrument is returned to the licensee by a
17 financial institution for any of these reasons, the licensee shall not release the
18 payment instrument without the written consent of the prosecutor or law
19 enforcement authority, or a court order.
- 20 (6) No licensee shall alter or delete the date on any payment instrument accepted by the
21 licensee.
- 22 (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the
23 conduct of the licensed business.
- 24 (8) No licensee shall require a customer to provide security for the transaction or
25 require the customer to provide a guaranty from another person.
- 26 (9) A licensee shall not have more than two (2) deferred deposit transactions from any
27 one (1) customer at any one time. The total proceeds received by the customer from

1 all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).

2 (10) (a) Prior to the establishment of the common database of deferred deposit
3 transactions established by KRS 286.9-140, each licensee shall inquire of any
4 customer seeking to present a deferred deposit transaction, whether the
5 customer has any outstanding deferred deposit transactions from any licensee.

6 (b) If the customer represents in writing that the customer has no more than one
7 (1) deferred deposit transaction outstanding to any licensee and that the total
8 proceeds received by the customer from the outstanding deferred deposit
9 transaction issued by the customer does not equal or exceed five hundred
10 dollars (\$500), a licensee may accept a deferred deposit transaction in an
11 amount that, when combined with the customer's other outstanding deferred
12 deposit transaction, does not exceed five hundred dollars (\$500) of total
13 proceeds received by the customer.

14 (c) If the customer represents in writing that the customer has more than one (1)
15 deferred deposit transaction outstanding to licensees or if the total proceeds
16 received by the customer from the deferred deposit transactions equal or
17 exceed five hundred dollars (\$500), a licensee shall not enter into another
18 deferred deposit transaction with that customer until the customer represents
19 to the licensee in writing that the customer qualifies to enter into a new
20 deferred deposit transaction under the requirements set forth in this subtitle.

21 (d) If the database described in KRS 286.9-140 is unavailable due to technical
22 difficulties with the database, as determined by the commissioner~~executive~~
23 ~~director~~, the licensee shall utilize the process established in this subsection to
24 verify deferred deposit transactions.

25 (11) A licensee shall not use any device or agreement, including agreements with an
26 affiliate of a licensee, with the intent to obtain greater charges than are authorized in
27 this subtitle.

- 1 (12) No licensee shall agree to hold a deferred deposit transaction for more than sixty
2 (60) days.
- 3 (13) Each deferred deposit transaction shall be made according to a written agreement
4 that shall be dated and signed by the customer and the licensee or an authorized
5 agent of the licensee at the licensed location, and made available to the
6 commissioner~~executive director~~ upon request. The customer shall receive a copy
7 of this agreement.
- 8 (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise
9 consolidate a deferred deposit transaction for a customer.
- 10 (15) No individual who enters into a deferred deposit transaction with a licensee shall be
11 convicted under the provisions of KRS 514.040.
- 12 (16) No licensee who enters into a deferred deposit transaction with an individual shall
13 prosecute or threaten to prosecute an individual under the provisions of KRS
14 514.040.
- 15 (17) Each licensee shall conspicuously display in each of its deferred deposit business
16 locations a sign supplied by the commissioner~~executive director~~ that gives the
17 following notice: "No person who enters into a post-dated or deferred deposit
18 transaction with this business establishment will be prosecuted for or convicted of
19 writing cold checks or of theft by deception under the provisions of KRS 514.040."
- 20 (18) A licensee may not enter into a deferred deposit transaction with a customer who
21 has two (2) open deferred deposit transactions.
- 22 (19) A licensee shall verify a customer's eligibility to enter into a deferred presentment
23 service transaction by doing one (1) of the following, as applicable:
- 24 (a) If the commissioner~~executive director~~ has not implemented a database under
25 KRS 286.9-140 or the database described in KRS 286.9-140 is not fully
26 operational, as determined by the commissioner~~executive director~~, the
27 licensee shall verify that the customer meets the eligibility requirements for a

deferred presentment service transaction under this subtitle. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subtitle.

- (b) If the commissioner~~[executive director]~~ has implemented a database under KRS 286.9-140 and the database described in that section is fully operational, as determined by the commissioner~~[executive director]~~, the licensee shall promptly and accurately access the database through an Internet real-time connection, and verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle.

→Section 811. KRS 286.9-102 is amended to read as follows:

- (1) Each licensee who engages in deferred deposit transactions shall give the customer the disclosures in writing required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the commissioner~~[executive director]~~ upon request.
- (2) Each licensee shall conspicuously display a schedule of all fees, and charges for all services provided by the licensee that are authorized by this subtitle. The notice shall be posted at each location where a licensee conducts its business under this subtitle.
- (3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in advance in the written disclosure.
- (4) Any personal check accepted from a customer must be payable to the licensee.
- (5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

→Section 812. KRS 286.9-104 is amended to read as follows:

- 1 (1) Each licensee shall file an annual report with the commissioner~~executive director~~
 2 by March 1 of each year, containing the following information:
- 3 (a) The names and addresses of each person owning a controlling interest in each
 4 license;
- 5 (b) The location of all places of business operated by the licensee and the nature
 6 of the business conducted at each location;
- 7 (c) The names and addresses of all affiliated entities regulated under this subtitle
 8 and doing business in this state;
- 9 (d) Balance sheets, statement of income and expenses, and other statistical
 10 information as may be reasonably required by the commissioner~~executive~~
 11 ~~director~~, consistent with generally accepted accounting practices, for the
 12 purpose of determining the general results of operations under this subtitle;
 13 and
- 14 (e) If the licensee is a corporation, the names and addressees of its principal
 15 officers and directors; or if the licensee is a partnership, the names and
 16 addresses of the partners; or if the licensee is a limited liability company, the
 17 names and addresses of the board of directors of the limited liability company.
- 18 (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a
 19 composite report may be filed.
- 20 (3) All reports shall be filed in a form as may reasonably be required by the
 21 commissioner~~executive director~~ and shall be sworn to by a responsible officer of
 22 the licensee.
- 23 (4) The information submitted by licensees under this section shall be held in
 24 confidence by the department~~office~~ and the commissioner~~executive director~~.
- 25 ➔Section 813. KRS 286.9-105 is amended to read as follows:
- 26 (1) Every licensee required to register with the United States Treasury Financial Crimes
 27 Enforcement Network shall file with the commissioner~~executive director~~ all

1 reports by federal currency reporting, recordkeeping, and suspicious transaction
 2 reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to
 3 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money
 4 laundering, for every transaction in this state. Every licensee required to register
 5 with the United States Treasury Financial Crimes Enforcement Network shall
 6 maintain copies of these reports in its records in compliance with KRS 286.9-074,
 7 or for a time period longer than allowed by KRS 286.9-074, where federal law
 8 prescribes.

- 9 (2) The timely filing with the appropriate federal agency of a complete and accurate
 10 report required under subsection (1) of this section is deemed to be in compliance
 11 with the requirements of subsection (1) of this section, unless the
 12 commissioner~~executive director~~ notifies the licensee that reports of the type
 13 required in subsection (1) of this section are not being regularly and
 14 comprehensively transmitted to the federal agency.

15 ➔Section 814. KRS 286.9-110 is amended to read as follows:

- 16 (1) The commissioner~~executive director~~ may suspend, revoke, place on probation,
 17 condition, restrict, refuse to issue or renew a license, accept the surrender of a
 18 license in lieu of revocation or suspension, order that refunds to customers be made,
 19 or issue a cease-and-desist order, if the commissioner~~executive director~~ finds that
 20 the person, licensee, or a person in control of a licensee:
- 21 (a) Has committed any fraud, engaged in any dishonest activities, or made any
 22 misrepresentation;
 - 23 (b) Does not meet, has failed to comply with, or has violated any provisions of
 24 this subtitle or any administrative regulation issued pursuant thereto, or any
 25 order of the commissioner~~executive director~~ issued pursuant thereto, or has
 26 violated any other law in the course of its or his or her dealings as a licensee;
 - 27 (c) Has made a false statement in the application for the license or failed to give a

- 1 truthful reply to a question in the application;
- 2 (d) Has demonstrated his or her incompetence or untrustworthiness to act as a
3 licensee;
- 4 (e) Is unfit, through lack of financial responsibility or experience, to conduct the
5 business of a check-cashing or deferred deposit service business, as the case
6 may be;
- 7 (f) Does not conduct his or her business in accordance with the law or conducts
8 business by a method that includes, or would include, activities that are illegal
9 where performed, or has willfully violated any provision of this subtitle; or
10 any administrative regulation promulgated or order of the
11 commissioner~~executive director~~ issued hereunder;
- 12 (g) Is insolvent;
- 13 (h) Is the subject of an administrative cease-and-desist order or similar order, or a
14 permanent or temporary injunction of any court of competent jurisdiction
15 entered under any other federal or state act applicable to the person, applicant,
16 or licensee;
- 17 (i) Has made or caused to be made to the commissioner~~executive director~~ any
18 false representation of material fact or has suppressed or withheld from the
19 commissioner~~executive director~~ any information that the applicant or
20 licensee possesses and which, if submitted by him or her, would have
21 rendered the applicant or licensee ineligible to be licensed under this subtitle;
- 22 (j) Has refused to permit an examination or investigation by the
23 commissioner~~executive director~~ of his or her books and affairs or has
24 refused or failed, within a reasonable time, to furnish any information or
25 records, or make any report that may be required or requested by the
26 commissioner~~executive director~~;
- 27 (k) Has been convicted of a felony;

- 1 (l) Has been convicted of any misdemeanor of which an essential element is
- 2 fraud, breach of trust, or dishonesty;
- 3 (m) Has had any license, registration, or claim of exemption related to the
- 4 financial services industry denied, revoked, suspended, conditioned, restricted,
- 5 or probated under the laws of this state, any other state, or the United States,
- 6 or has surrendered, withdrawn, or terminated any license, registration, or
- 7 claim of exemption issued or registration granted by this state or any other
- 8 jurisdiction under threat of administrative action;
- 9 (n) Has employed or contracted with a person who has failed to license or has had
- 10 a license, registration, or claim of exemption denied, revoked, suspended,
- 11 conditioned, restricted, or probated in this Commonwealth or another state;
- 12 (o) Has failed to pay any required fee under this subtitle;
- 13 (p) Has abandoned an application or renewal application by failing to provide the
- 14 commissioner~~executive director~~ any information required under this
- 15 subtitle, or requested by the commissioner~~executive director~~, to complete an
- 16 application;
- 17 (q) Has failed to comply with an administrative or court order imposing child
- 18 support obligations;
- 19 (r) Has failed to pay state income taxes or to comply with any administrative or
- 20 court order directing the payment of state income tax;
- 21 (s) Has failed to properly verify a customer's eligibility for a deferred deposit
- 22 transaction;
- 23 (t) Has applied for an adjudication of bankruptcy, reorganization, arrangement, or
- 24 other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to
- 25 110;
- 26 (u) Has suspended payment of its obligations or has made an assignment for the
- 27 benefit of its creditors;

- 1 (v) Has violated any of the recordkeeping and reporting requirements of the
 2 United States government including 31 U.S.C. secs. 5311 to 5332 and 31
 3 C.F.R. pt. 103; or
- 4 (w) No longer meets the requirements under this subtitle to hold a license.
- 5 (2) If the reason for revocation, suspension, restriction, condition, or probation of a
 6 licensee's license at any one location is of general application to all locations
 7 operated by a licensee, the commissioner~~executive director~~ may revoke, suspend,
 8 restrict, condition, or probate all licenses issued to a licensee.
- 9 (3) Any person who has had a license denied by the commissioner~~executive director~~
 10 shall not be eligible to apply for a license under this subtitle until after expiration of
 11 one (1) year from the date of denial.
- 12 (4) Any person who has had a license revoked by the commissioner~~executive director~~
 13 shall not be eligible to apply for a license under this subtitle until after expiration of
 14 three (3) years from the date of revocation. A person whose license has been
 15 revoked twice shall be deemed permanently revoked and shall not again be eligible
 16 for a license under this subtitle.
- 17 (5) Any person whose license has been denied, suspended, revoked, or surrendered in
 18 lieu of revocation or suspension under this section is prohibited from participating
 19 in any business activity of a licensee under this subtitle and from engaging in any
 20 business activity on the premises where a licensee under this subtitle is conducting
 21 its business.
- 22 (6) The surrender or expiration of a license shall not affect the person's civil or criminal
 23 liability for acts committed prior to the license surrender or expiration. Revocation,
 24 suspension, refusal to renew, surrender, or expiration of a license shall not impair or
 25 affect the obligation of any preexisting contract between a licensee and a customer.
 26 The surrender or expiration of a license shall not affect a proceeding to suspend or
 27 revoke a license.

- 1 (7) The commissioner~~[executive-director]~~ may notify the Department of Revenue,
 2 which may institute an action in the name of the Commonwealth of Kentucky, in
 3 the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery
 4 of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
- 5 (8) The commissioner~~[executive-director]~~ may file a complaint in the Franklin Circuit
 6 Court, or any court of competent jurisdiction, for a temporary restraining order or
 7 injunction against any person, where the commissioner~~[executive-director]~~ has
 8 reason to believe from evidence satisfactory to the commissioner~~[executive-~~
 9 ~~director]~~ that such person has violated, or is about to violate, a provision in this
 10 subtitle, for the purpose of restraining and enjoining such person from continuing or
 11 engaging in the violation or doing any act in furtherance thereof. The court shall
 12 have jurisdiction over the proceeding and shall have the power to enter an order or
 13 judgment awarding preliminary or final injunctive relief and any other relief that the
 14 court deems proper. Any person who violates a temporary restraining order or
 15 injunction issued by the court entered as a result of a violation of this subtitle shall
 16 be held in contempt of court and the court may assess a civil penalty in an amount
 17 equivalent to the amounts found in KRS 286.9-991.

18 ➔Section 815. KRS 286.9-120 is amended to read as follows:

- 19 (1) The commissioner~~[executive-director]~~ may file an administrative complaint against
 20 any person if it appears on grounds satisfactory to the commissioner~~[executive-~~
 21 ~~director]~~ that a potential or actual violation of this subtitle has been committed and
 22 when the person may be subject to the penalties of KRS 286.9-071, 286.9-110, and
 23 286.9-991. The commissioner~~[executive-director]~~ shall serve the administrative
 24 complaint to the last known address of the person named in the complaint. Service
 25 shall be by certified mail or personal delivery. The person named in the
 26 administrative complaint shall be entitled to an administrative hearing conducted in
 27 accordance with KRS Chapter 13B but only upon timely receipt of a written answer

1 and request for an administrative hearing within twenty (20) days of the mailing or
 2 hand delivery of the administrative complaint. If timely requested, an administrative
 3 hearing shall be held in accordance with the provisions of KRS Chapter 13B. If an
 4 answer is not timely filed, or a written request for a hearing is not timely filed, the
 5 commissioner~~executive director~~ may enter a final order.

6 (2) No license shall be denied, limited, conditioned, restricted, probated, suspended, or
 7 revoked unless the applicant or licensee is afforded the opportunity for a hearing to
 8 be conducted in accordance with KRS Chapter 13B.

9 ➔Section 816. KRS 286.9-125 is amended to read as follows:

10 (1) The commissioner~~executive director~~ may enter an emergency order suspending,
 11 conditioning, limiting, or restricting a license issued under this subtitle without
 12 notice or hearing if it appears upon grounds satisfactory to the
 13 commissioner~~executive director~~ that the licensee has engaged or is engaging in
 14 unsafe, unsound, or illegal practices that pose an imminent threat to the public
 15 interest.

16 (2) One (1) or more of the following circumstances shall be considered sufficient
 17 grounds for an emergency order under this section if it appears on grounds
 18 satisfactory to the commissioner~~executive director~~ that:

- 19 (a) The licensee does not meet or has failed to comply with more than one (1) of
 20 the requirements of this subtitle and the violations appear to be willful;
- 21 (b) The licensee is in such financial condition that it cannot continue in business
 22 with safety to its customers;
- 23 (c) The licensee has been indicted, charged with, or found guilty of any act
 24 involving fraud, deception, theft, or breach of trust, or is the subject of an
 25 administrative cease-and-desist order or similar order, or of a permanent or
 26 temporary injunction currently in effect entered by any court or agency of
 27 competent jurisdiction;

- 1 (d) The licensee has made any misrepresentations or false statements to, or
 2 concealed any essential or material fact from, any person in the course of
 3 doing business, or has engaged in any course of business that has worked or
 4 tended to work a fraud or deceit upon any person or would so operate;
- 5 (e) The licensee has refused to permit an examination, or has refused or failed,
 6 within a reasonable time, to furnish any information or make any report that
 7 may have been requested or required by the commissioner~~executive director~~
 8 in connection with an investigation or examination;
- 9 (f) The licensee has had any license, registration, or claim of exemption related to
 10 the financial services industry denied, suspended, or revoked under the laws of
 11 this state or any other state of the United States, or has surrendered or
 12 terminated any license, registration, or claim of exemption issued by this state
 13 or any other jurisdiction under threat of administrative action; or
- 14 (g) The deposit required under KRS 286.9-040(1) has terminated, expired, or
 15 otherwise no longer remains in effect.
- 16 (3) An emergency order issued under this section becomes effective when signed by the
 17 commissioner~~executive director~~. The emergency order shall be delivered by
 18 personal delivery or certified mail to the last known address of the person. The
 19 order shall be deemed served upon delivery or upon return of the order.
- 20 (4) A party aggrieved by an emergency order issued by the commissioner~~executive~~
 21 ~~director~~ under this section may request an emergency hearing. The request for
 22 hearing shall be filed with the commissioner~~executive director~~ within twenty (20)
 23 days of service of the emergency order.
- 24 (5) Upon receipt of a written request for an emergency hearing, the
 25 commissioner~~executive director~~ shall conduct an emergency hearing as required
 26 under KRS 13B.125, within ten (10) working days from the date of receipt of the
 27 request for hearing, unless the parties agree otherwise.

1 (6) An emergency order issued under this section shall remain in effect until it is
 2 stayed, withdrawn, or superseded by an order of the commissioner~~executive~~
 3 ~~director~~ or until it is terminated by a court order.

4 ➔Section 817. KRS 286.9-128 is amended to read as follows:

5 (1) The commissioner~~executive director~~ may enter into a consent order with another
 6 person at any time for the purpose of resolving a matter arising under this subtitle.
 7 A consent order shall be signed by the person to whom it is issued or by the person's
 8 authorized representative and shall indicate agreement with the terms contained in
 9 the order. A consent order may provide that it does not constitute an admission by a
 10 person that this subtitle, or an administrative regulation promulgated under this
 11 subtitle, or an order issued under this subtitle has been violated.

12 (2) Any consent order that the commissioner~~executive director~~ enters into to resolve a
 13 matter arising under this subtitle shall be deemed an administrative action and a
 14 public record.

15 ➔Section 818. KRS 286.9-130 is amended to read as follows:

16 The commissioner~~executive director~~ may stay, suspend, or postpone the effective date
 17 of an order issued under this subtitle, pending the administrative proceeding and the
 18 issuance of a final order resulting from the proceeding, upon written request by the
 19 affected person or licensee.

20 ➔Section 819. KRS 286.9-140 is amended to read as follows:

21 (1) The commissioner~~executive director~~ shall, on or before July 1, 2010, implement a
 22 common database with real-time access through an Internet connection for deferred
 23 deposit service business licensees as provided in this subtitle unless implementing
 24 the database by that date would be financially impracticable for the
 25 commissioner~~executive director~~ to design and operate a database or because a
 26 contract with a qualified third-party provider has not been entered into. The
 27 database shall be accessible to the department~~office~~ and the deferred deposit

1 service business licensee to verify whether any deferred deposit transactions are
 2 outstanding for a particular person. A deferred deposit service business licensee
 3 shall accurately and promptly submit such data before entering into each deferred
 4 deposit transaction in such format as the commissioner~~[executive director]~~ may
 5 require by rule or order, including the customer's name, Social Security number or
 6 employment authorization alien number, address, driver's license number, amount
 7 of the transaction, date of transaction, date that the completed transaction is closed,
 8 and any additional information required by the commissioner~~[executive director]~~.
 9 The commissioner~~[executive director]~~ may adopt rules to administer and enforce
 10 the provisions of this subtitle and to assure that the database is used by deferred
 11 deposit service business licensees in accordance with this subtitle.

12 (2) The commissioner~~[executive director]~~ shall impose a fee of one dollar (\$1) per
 13 transaction for data required to be submitted by a deferred deposit service business
 14 licensee, which fee may be charged to the customer.

15 (3) The commissioner~~[executive director]~~ may operate the database described in
 16 subsection (1) of this section or may select and contract with a third-party provider
 17 to operate the database. If the commissioner~~[executive director]~~ contracts with a
 18 third-party provider for the operation of the database, all of the following apply:

19 (a) The commissioner~~[executive director]~~ shall ensure that the third-party
 20 provider selected as the database provider operates the database pursuant to
 21 the provisions of this subtitle;

22 (b) The commissioner~~[executive director]~~ shall consider cost of service and
 23 ability to meet all the requirements of this subtitle in selecting a third-party
 24 provider as the database provider;

25 (c) In selecting a third-party provider to act as the database provider, the
 26 commissioner~~[executive director]~~ shall give strong consideration to the third-
 27 party provider's ability to prevent fraud, abuse, and other unlawful activities

- 1 associated with deferred presentment service transactions and provide
 2 additional tools for the administration and enforcement of this subtitle;
- 3 (d) The third-party provider shall use the data collected under this subtitle only as
 4 prescribed in this subtitle and the contract with the department~~{office}~~ and for
 5 no other purpose;
- 6 (e) If the third-party provider violates this subtitle, the commissioner~~{executive~~
 7 ~~director}~~ may terminate the contract and the third-party provider may be
 8 barred from becoming a party to any other state contracts;
- 9 (f) A person injured by the third-party provider's violation of this subtitle may
 10 maintain a civil cause of action against the third-party provider and may
 11 recover actual damages plus reasonable attorney's fees and court costs; and
- 12 (g) The commissioner~~{executive director}~~ may require that the third-party
 13 provider collect the fee assessed in subsection (2) of this section from the
 14 licensee. The third-party provider shall remit the fee collected from the
 15 licensee to the commissioner~~{executive director}~~ no later than the first day of
 16 each month. The third-party provider shall deposit any fee collected in a
 17 separate escrow account in a federally insured financial institution and shall
 18 hold the fee deposited in trust for the Commonwealth of Kentucky.
- 19 (4) The database described in subsection (1) of this section shall allow a deferred
 20 deposit service business licensee accessing the database to do all of the following:
- 21 (a) Verify whether a customer has any open deferred deposit transactions with
 22 any deferred deposit business service licensee that have not been closed;
- 23 (b) Provide information necessary to ensure deferred deposit service business
 24 licensee compliance with any requirements imposed by the United States
 25 Treasury Office of Foreign Assets Control and United States Treasury Office
 26 of Financial Crimes Enforcement Network; and
- 27 (c) Track and monitor the number of customers who notify a deferred deposit

1 service business licensee of violations of this subtitle, the number of times a
 2 deferred deposit service business licensee agreed that a violation occurred, the
 3 number of times that a deferred deposit service business licensee did not agree
 4 that a violation occurred, the amount of restitution paid, and any other
 5 information the commissioner~~executive director~~ requires by rule or order.

6 (5) While operating the database, the database provider shall do all of the following:

7 (a) Establish and maintain a process for responding to transaction verification
 8 requests due to technical difficulties occurring with the database that prevent
 9 the licensee from accessing the database through the Internet;

10 (b) Comply with any applicable federal and state provisions to prevent identity
 11 theft;

12 (c) Provide accurate and secure receipt, transmission, and storage of customer
 13 data; and

14 (d) Meet the requirements of this subtitle.

15 (6) When the database provider receives notification that a deferred deposit service
 16 transaction has been closed, the database provider shall designate the transaction as
 17 closed in the database immediately, but in no event after 11:59 p.m. on the day the
 18 commissioner~~executive director~~ or database provider receives notification.

19 (7) The database provider shall automatically designate a deferred deposit service
 20 transaction as closed in the database five (5) days after the transaction maturity date
 21 unless a deferred deposit service business licensee reports to the database provider
 22 before that time that the transaction remains open because of the customer's failure
 23 to make payment; that the transaction is open because the customer's payment
 24 instrument or an electronic redeposit is in the process of clearing the banking
 25 system; or that the transaction remains open because the customer's payment
 26 instrument is being returned to the deferred deposit service business licensee for
 27 insufficient funds, a closed account, or a stop payment order; or because of any

1 other factors determined by the commissioner~~[executive director]~~. If a deferred
 2 deposit service business licensee reports the status of a transaction as open in a
 3 timely manner, the transaction remains an open transaction until it is closed and the
 4 database provider is notified that the transaction is closed.

5 (8) If a deferred deposit service business licensee stops providing deferred deposit
 6 service transactions, the database provider shall designate all open transactions with
 7 that licensee as closed in the database sixty (60) days after the date the deferred
 8 deposit service business licensee stops offering deferred deposit service
 9 transactions, unless the deferred deposit service business licensee reports to the
 10 database provider before the expiration of the sixty (60) day period which of its
 11 transactions remain open and the specific reason each transaction remains open. The
 12 deferred deposit service business licensee shall also provide to the
 13 commissioner~~[executive director]~~ a reasonably acceptable plan that outlines how
 14 the deferred deposit service business licensee will continue to update the database
 15 after it stops offering deferred presentment service transactions. The
 16 commissioner~~[executive director]~~ shall promptly approve or disapprove the plan
 17 and immediately notify the deferred deposit service business licensee of the
 18 commissioner's~~[executive director's]~~ decision. If the plan is disapproved, the
 19 deferred deposit service business licensee may submit a new plan or may submit a
 20 modified plan for the deferred deposit service business licensee to follow. If at any
 21 time the commissioner~~[executive director]~~ reasonably determines that a deferred
 22 deposit service business licensee that has stopped offering deferred deposit service
 23 transactions is not updating the database in accordance with its approved plan, the
 24 commissioner~~[executive director]~~ shall immediately close or instruct the database
 25 provider to immediately close all remaining open transactions of that deferred
 26 deposit service business licensee.

27 (9) The response to an inquiry to the database provider by a deferred deposit service

business licensee shall state only that a person is eligible or ineligible for a new deferred deposit service transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transaction history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the commissioner~~executive director~~.

(10) The commissioner~~executive director~~ may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.

(11) The commissioner~~executive director~~ shall investigate violations of and enforce this subtitle. The commissioner~~executive director~~ shall not delegate his or her responsibilities under this subsection to any third-party provider.

(12) (a) The commissioner~~executive director~~ shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:

1. That the database has been implemented; and
2. Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.

(b) A deferred deposit service business licensee shall promptly and accurately enter into the database all transactions undertaken by the licensee upon receipt

1 of the written notification established in paragraph (a) of this subsection.

2 (13) The commissioner~~[executive-director]~~ may, by rule or order, do all of the
3 following:

4 (a) Require that data be retained in the database only as required to ensure
5 deferred deposit service business licensee compliance with this subtitle;

6 (b) Require that customer transaction data in the database are archived within
7 three hundred sixty-five (365) days after the customer transaction is closed
8 unless needed for a pending enforcement or legal action;

9 (c) Require that any identifying customer information is deleted from the database
10 when data are archived; and

11 (d) Require that data in the database concerning a customer transaction are
12 deleted from the database three (3) years after the customer transaction is
13 closed or, if any administrative, legal, or law enforcement action is pending,
14 three (3) years after the administrative, legal, or law enforcement action is
15 completed, whichever is later.

16 (14) The commissioner~~[executive-director]~~ may maintain access to data archived under
17 subsection (13) of this section for examination, investigation, or legislative or
18 policy review.

19 (15) A deferred deposit service business licensee may rely on the information contained
20 in the database as accurate and is not subject to any administrative penalty or civil
21 liability as a result of relying on inaccurate information contained in the database,
22 provided the deferred deposit licensee accurately and promptly submits such data as
23 required before entering into a deferred deposit transaction with a customer.

24 (16) The commissioner~~[executive-director]~~ may use the database to administer and
25 enforce this subtitle.

26 (17) The commissioner~~[executive-director]~~ may require a database provider to file a
27 report by March 1 of each year containing the following information:

- 1 (a) The total number and dollar amount of deferred deposit transactions entered
- 2 into in the calendar year ending December 31 of the previous year;
- 3 (b) The total number and dollar amount of deferred deposit transactions
- 4 outstanding as of December 31 of the previous year;
- 5 (c) The total dollar amount of fees collected for deferred deposit transactions as
- 6 of December 31 of the previous year;
- 7 (d) The minimum, maximum, and average dollar amount of deferred deposit
- 8 transactions entered into, the total dollar amount of the net charge-offs and
- 9 write-offs, and the net recoveries of licensees as of December 31 of the
- 10 previous year;
- 11 (e) The average deferred deposit transaction amount, the average number of
- 12 transactions, and the average aggregate deferred deposit transaction amount
- 13 entered into per customer as of December 31 of the previous year;
- 14 (f) The average number of days a customer was engaged in a deferred deposit
- 15 transactions for the previous year; and
- 16 (g) An estimate of the average total fees paid per customer for deferred deposit
- 17 transactions for the previous year.

18 (18) Enforcement of this section shall be effective ninety (90) days after the database
 19 implementation date established by the commissioner~~executive director~~ as set
 20 forth in subsection (12) of this section.

21 ➔Section 820. KRS 286.9-990 is amended to read as follows:

22 (1) Any person who intentionally violates any provision of this subtitle, or violates any
 23 administrative regulation promulgated hereunder, or violates any order of the
 24 commissioner~~executive director~~, shall be guilty of a Class A misdemeanor. Each
 25 transaction in violation of this subtitle and each day that a violation continues shall
 26 constitute a separate offense.

27 (2) This section shall not be deemed to limit the power of the commissioner~~executive~~

1 ~~director~~] to enforce any of the administrative penalties found in this subtitle.

2 (3) For purposes of this section, "payment instrument" also includes debit
3 authorization, electronic funds transfer, and any other form of electronic
4 transmission of money.

5 ➔Section 821. KRS 286.9-991 is amended to read as follows:

6 (1) The commissioner~~[executive director]~~ may levy a civil penalty against a person
7 who violates any provision of, or administrative regulation promulgated under, this
8 subtitle or any order issued by the commissioner~~[executive director]~~ under this
9 subtitle.

10 (2) The civil penalty shall be not less than one thousand dollars (\$1,000) or more than
11 five thousand dollars (\$5,000) per violation for each day the violation is
12 outstanding, plus the state's costs and expenses for the examination, investigation,
13 and prosecution of this matter, including reasonable attorney's fees and court costs.

14 (3) Any civil penalties imposed may be in addition to any other remedy or penalty
15 imposed in this subtitle.

16 ➔Section 822. KRS 286.10-200 is amended to read as follows:

17 As used in KRS 286.10-200 to 286.10-285 and KRS 286.10-991, unless the context
18 requires otherwise:

19 (1) "Capital" means the assets of a business entity less the liabilities of that business
20 entity. Assets and liabilities shall be measured according to generally accepted
21 accounting principles or relevant pronouncements of the financial accounting
22 standards board;

23 (2) "Department~~[Office]~~" means the Department~~[Office]~~ of Financial Institutions;

24 (3) "Person" means any sole proprietorship, general partnership, corporation, limited
25 liability company, or limited liability partnership duly qualified to do business in
26 Kentucky;

27 (4) "Pledgor" means any individual who executes a title pledge agreement as defined in

1 subsection (5) of this section;

2 (5) "Title pledge agreement" means a thirty (30) day written agreement whereby a title
3 pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees
4 to give the title pledge lender a security interest in unencumbered titled personal
5 property owned by the pledgor, subject to the terms and conditions of KRS 286.10-
6 200 to 286.10-285 and KRS 286.10-991. A pledgor shall have no personal liability
7 on a title pledge agreement and a title pledge agreement shall not be considered a
8 debt transaction for any purpose of law;

9 (6) "Title pledge lender" means any person engaged in the business of making title
10 pledge agreements;

11 (7) "Title pledge office" means the location at which, or premises in which, a title
12 pledge lender regularly conducts business; and

13 (8) "Titled personal property" means any personal property the ownership of which is
14 evidenced and delineated by a state issued certificate of title but shall not include
15 mobile homes.

16 ➔Section 823. KRS 286.10-210 is amended to read as follows:

17 No person shall engage in the business of a title pledge lender without having first
18 obtained a license. Any person engaged in the business of title pledge lending on July 15,
19 1998, may continue to engage in the business without a license until the
20 commissioner~~[executive-director]~~ shall have acted upon his or her application for a
21 license, if the application is filed within sixty (60) days after July 15, 1998.

22 ➔Section 824. KRS 286.10-215 is amended to read as follows:

23 To qualify for a license, an applicant shall apply to the department~~[office]~~ and satisfy the
24 following requirements:

25 (1) Be operating as a sole proprietorship, general partnership, limited liability
26 partnership, corporation, or limited liability company duly qualified to do business
27 in Kentucky;

- 1 (2) Demonstrate the existence of initial capital of and the maintenance of, at least one
2 hundred thousand dollars (\$100,000) for the security of all of the applicant's
3 licensed title pledge offices within the Commonwealth;
- 4 (3) Demonstrate the existence of a bond, with approved surety, in the amount of one
5 hundred thousand dollars (\$100,000) for the security of all of the applicant's
6 licensed title pledge offices within the Commonwealth. This bond shall be
7 maintained for the benefit and security of the title pledge borrowers and for the
8 benefit and security of the Commonwealth with respect to the civil and criminal
9 penalties provided in KRS 286.10-991; and
- 10 (4) Represent that the business will be operated lawfully, fairly, and ethically in
11 accordance with KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

12 ➔Section 825. KRS 286.10-220 is amended to read as follows:

13 Each application for a title pledge lending license shall be filed with the
14 department~~[office]~~, and the application shall provide the following:

- 15 (1) The name of the beneficial owner if a sole proprietorship; or in the case of a
16 corporation, all individuals serving as officers or directors; or in the case of a
17 partnership or limited liability company, the members thereof;
- 18 (2) The street address where the title pledge office is to be operated;
- 19 (3) Proof of the capital and surety bond requirements set forth in KRS 286.10-215,
20 accompanied by an unaudited financial statement from a certified public
21 accountant;
- 22 (4) An affidavit from each individual set forth in subsection (1) of this section stating
23 that each individual has not been convicted of a felony within the ten (10) year
24 period preceding the date of application;
- 25 (5) Certified funds in the amount of five hundred dollars (\$500) payable to the
26 department; and
- 27 (6) Other information as required by the commissioner~~[executive director]~~.

➔Section 826. KRS 286.10-225 is amended to read as follows:

- (1) Following verification by the department~~[office]~~ of the information contained in the application, every person having satisfied the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991 and having paid the business taxes and any other taxes required by law shall be granted a license as set forth in this section. The license issued under this section shall state the name of the person to whom issued, the place of business, and street address where the title pledge office is located. The license shall entitle the person to do business at the place designated on the license. The license shall not be transferable from one (1) person to another but, upon approval of the commissioner~~[executive director]~~, may be transferred from one (1) location to another within the county of the location originally licensed.
- (2) A title pledge lender license shall be renewed each year upon payment of an annual fee of five hundred dollars (\$500) and compliance with the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

➔Section 827. KRS 286.10-230 is amended to read as follows:

- (1) Every title pledge lender doing business under the laws of this Commonwealth shall be subject to inspection by the commissioner~~[executive director]~~ or by an examiner appointed by the commissioner~~[executive director]~~ in accordance with KRS 286.1-440. Examination shall be made of every title pledge lender at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.
- (2) The commissioner~~[executive director]~~, deputy commissioner~~[director]~~, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the title pledge lender, or the lender's designee.

1 ➔ Section 828. KRS 286.10-235 is amended to read as follows:

2 In undertaking the examination of any title pledge lender, neither the Commonwealth, the
 3 commissioner~~[executive director]~~, nor any examiner employed by the Commonwealth
 4 shall become liable to any pledgor of the title pledge lender if the examination or an
 5 omission in the examination fails to fully and effectively disclose the financial condition
 6 of the title pledge lender.

7 ➔ Section 829. KRS 286.10-240 is amended to read as follows:

8 (1) Reports of examination, and correspondence that relates to the report of
 9 examination, of a title pledge lender shall be considered confidential information.

10 No officer or director of a title pledge lender or employee of the department~~[office]~~
 11 shall release any information contained in the examination, except if:

12 (a) Required in a proper legal proceeding in which a subpoena and protective
 13 order insuring confidentiality have been issued by a court of competent
 14 jurisdiction; or

15 (b) The information is referred to an appropriate prosecuting attorney for possible
 16 criminal proceedings, to outside persons providing professional services to the
 17 title pledge lender, or to outside persons for the purpose of evaluating the title
 18 pledge lender for possible acquisition. Reports of examination released to
 19 outside persons providing professional services to the title pledge lender or for
 20 the purpose of evaluating the title pledge lender for possible acquisition, shall
 21 require a written request from the outside person and prior approval by the
 22 board of directors or an executive committee of the title pledge lender.

23 (2) The department~~[office]~~ may furnish to and exchange information and reports with
 24 officials and examiners of other properly authorized state or federal regulatory
 25 authorities.

26 (3) Every official report concerning a title pledge lender, and every report of
 27 examination, shall be prima facie evidence of the facts stated therein for all

1 purposes in any action in which the department~~{office}~~ or title pledge lender is a
2 party.

3 ➔Section 830. KRS 286.10-245 is amended to read as follows:

4 A fee shall be collected by the department~~{office}~~ for any examination as set forth in
5 KRS 286.10-230. The fee shall be sufficient to cover the cost of the examination based
6 upon fair compensation for time and actual expense.

7 ➔Section 831. KRS 286.10-250 is amended to read as follows:

8 (1) Every title pledge lender shall keep a consecutively numbered record of every title
9 pledge agreement executed. A copy of the title pledge agreement shall be
10 maintained for a period of two (2) years from the date the title pledge agreement
11 was executed, and shall include the following:

12 (a) A clear and accurate description of the titled personal property, including its
13 vehicle identification number, license plate number, year, make, model, type,
14 and color;

15 (b) The date of the title pledge agreement;

16 (c) The amount of the loan made in accordance with the title pledge agreement;

17 (d) The date of maturity of the loan; and

18 (e) The name, date of birth, Social Security number, and residence address of the
19 pledgor, together with a photocopy of the pledgor's motor vehicle operator's
20 license.

21 (2) The pledgor shall sign the title pledge agreement, and shall be provided with a copy
22 of the agreement. The title pledge agreement shall also be signed by the title pledge
23 lender or the lender's employee or agent.

24 (3) This information shall be maintained at the title pledge office location, approved by
25 the department~~{office}~~, and made available for inspection by the law enforcement
26 agencies where the title pledge lender is located during the regular business hours of
27 the title pledge office.

➔Section 832. KRS 286.10-285 is amended to read as follows:

A title pledge lender shall not:

- (1) Accept a pledge from a person under eighteen (18) years of age, from anyone who appears to be intoxicated, or from any person known to the title pledge lender to have been convicted of larceny, burglary, or robbery;
- (2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default, and to sell the titled personal property;
- (3) Accept any waiver, in writing or otherwise, or any right or protection accorded a pledgor under KRS 286.10-200 to 286.10-285 and KRS 286.10-991;
- (4) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificates of title in the physical possession of the title pledge lender;
- (5) Purchase pledged titled personal property in the operation of its business;
- (6) Maintain more than one (1) title pledge office per license;
- (7) Violate the provisions of KRS 286.10-260 or any administrative regulation promulgated by the department~~{office}~~;
- (8) Operate a title pledge office on the same premises as a pawnbroker as defined in KRS 226.010; or
- (9) Lend moneys in excess of four thousand dollars (\$4,000) to any one (1) title pledge borrower at a given time.

➔Section 833. KRS 286.10-991 is amended to read as follows:

- (1) Every person who knowingly violates any of the provisions of KRS 286.10-200 to 286.10-285 or this section is guilty of a Class A misdemeanor. Upon conviction of such a Class A misdemeanor the license of the title pledge lender may be suspended or revoked by the department~~{office}~~.
- (2) Notwithstanding any other law to the contrary, apart from or in addition to any

sanctions which may be imposed under subsection (1) of this section, upon an administrative finding by the department~~{office}~~ that a title pledge lender has violated the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period, specified by the department~~{office}~~, not to exceed forty-five (45) days. Notwithstanding the provisions of KRS 286.10-205, or any other law to the contrary, upon a finding by the department~~{office}~~ that a title pledge lender has repeatedly and persistently engaged in a pattern of violating the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period specified by the department~~{office}~~, of not less than ninety (90) days.

(3) In addition to the sanctions which may be imposed under subsection (2) of this section, the department~~{office}~~ may impose a fine against any person for a violation of KRS 286.10-200 to 286.10-285 or this section of no less than five hundred dollars (\$500) and no more than one thousand dollars (\$1,000) per violation.

(4) During the period of any suspension or following any revocation, the title pledge lender shall not engage, in any county within this Commonwealth, in the business of making title pledge agreements with pledgors.

➔Section 834. KRS 286.11-003 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

(1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with, another person;

(2) "Agent" means a person authorized by written agreement and designated by the licensee to act on behalf of a licensee under the provisions of this subtitle;

(3) "Applicant" means a person filing an application or renewal application for a license under this subtitle;

(4) "Control" means:

- 1 (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent
 2 (25%) or more of a class of voting securities or voting interests of a licensee
 3 or applicant, or person in control of a licensee or applicant;
- 4 (b) The power to elect a majority of executive officers, managers, directors,
 5 trustees, or other persons exercising managerial authority of a licensee or
 6 applicant, or person in control of a licensee or applicant; or
- 7 (c) The power to exercise, directly or indirectly, a controlling influence over the
 8 management or policies of a licensee or applicant, or person in control of a
 9 licensee or applicant;
- 10 (5) "Controlling person" means any person in control of a licensee;
- 11 (6) "Director" means a member of a licensee's or applicant's board of directors if the
 12 applicant or licensee is a corporation, or manager if the applicant or licensee is a
 13 limited liability company, or a partner if the applicant or licensee is a partnership;
- 14 (7) "Electronic instrument" means a card or other tangible object for the transmission or
 15 payment of money, including a stored value card or device, which contains a
 16 microprocessor chip, magnetic stripe, or other means for storage of information,
 17 that is prefunded and for which the value is decremented upon each use, but does
 18 not include a card or other tangible object that is redeemable by the issuer in the
 19 issuer's goods and services;
- 20 (8) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
 21 of the Department~~[Office]~~ of Financial Institutions;
- 22 (9) "Executive officer" means the president, chairperson of the executive committee,
 23 responsible individual, chief financial officer, and any other person who performs
 24 similar functions;
- 25 (10) "Financial institution" means any person doing business under the laws of any state
 26 or commonwealth or the United States relating to banks, bank holding companies,
 27 savings banks, savings and loan associations, trust companies, or credit unions;

- 1 (11) "Insolvent" means that appearing upon examination of any licensee or its agent that
2 its liabilities exceeds its assets or it cannot meet its obligations in the usual and
3 ordinary course of business for any reason;
- 4 (12) "Key shareholder" means any person, or group of persons acting in concert, who is
5 the owner of twenty percent (20%) or more of any voting class of an applicant's or
6 licensee's stock;
- 7 (13) "Licensee" means a person licensed under this subtitle;
- 8 (14) "Material litigation" means litigation that according to generally accepted
9 accounting principles is significant to an applicant's or a licensee's financial health,
10 and would be required to be disclosed in the applicant's or licensee's annual audited
11 financial statements, report to shareholders, or similar records, including any
12 adjudication against an applicant or licensee by a federal or state administrative or
13 regulatory agency relating to a violation of the Bank Secrecy Act, 31 U.S.C. secs.
14 5311-5332 and 31 C.F.R. pt. 103, regardless of whether the applicant or licensee
15 has admitted liability or fault;
- 16 (15) "Monetary value" means a medium of exchange whether or not redeemable in
17 money;
- 18 (16) "Money" means a medium of exchange that is authorized or adopted by the United
19 States or a foreign government or other recognized medium of exchange, including
20 a monetary unit of account established by an intergovernmental organization or by
21 agreement between two (2) governments;
- 22 (17) "Money transmission" means engaging in the business of receiving money or
23 monetary value to transmit, deliver, or instruct to be transmitted or delivered,
24 money or monetary value to another location inside or outside the United States by
25 any and all means, including but not limited to wire, facsimile, electronic transfer,
26 or issuing stored value;
- 27 (18) "Money transmitter" means a person that is engaged in money transmission;

- 1 (19) "Net worth" means the excess of assets over liabilities as determined by generally
2 accepted accounting principles;
- 3 (20) "Department~~[Office]~~" means the Kentucky Department~~[Office]~~ of Financial
4 Institutions;
- 5 (21) "Outstanding payment instrument" means any payment instrument issued by the
6 licensee which has been sold or issued in the United States directly by the licensee
7 or any payment instrument issued by the licensee which has been sold by an agent
8 of the licensee in the United States, which has been reported to the licensee as
9 having been sold, and which has not yet been paid by or for the issuer;
- 10 (22) (a) "Payment instrument" means:
- 11 1. A check, draft, money order, traveler's check, or other written or
12 electronic instrument or order for the transmission or payment of money,
13 sold or issued to one (1) or more persons, whether or not such
14 instrument is negotiable; or
- 15 2. The purchase or the deposit of funds for the purchase of a check, draft,
16 money order, traveler's check, or other written or electronic instrument;
- 17 (b) "Payment instrument" does not include any credit card voucher, letter of
18 credit, or instrument that is redeemable by the issuer in goods or services;
- 19 (23) "Person" means any individual, corporation, business trust, estate, trust, partnership,
20 limited liability company, association, organization, joint venture, government and
21 any subdivision, agency or instrumentality thereof, or any other legal or commercial
22 entity;
- 23 (24) "Record" means information that is inscribed on a tangible medium, or that is stored
24 in an electronic or other medium, and is retrievable in perceivable form;
- 25 (25) "Remit" means either to make direct payment of the funds to the licensee or its
26 representatives authorized to receive those funds, or to deposit the funds in a bank,
27 credit union, or savings and loan association, or other similar financial institution in

1 an account specified by the licensee;

2 (26) "Responsible individual" means an individual who is employed by a licensee and
3 has principal managerial authority over the provision of money transmission by the
4 licensee in this state;

5 (27) "State" means a state or commonwealth of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
7 possession that is subject to the jurisdiction of the United States;

8 (28) "Stored value" means monetary value that is evidenced by an electronic record; and

9 (29) "Unsafe or unsound practice" means a practice or conduct by a person licensed to
10 provide money transmission, or an agent of such a person, which creates the
11 likelihood of material loss, insolvency, or dissipation of the licensee's assets, or
12 otherwise materially prejudices the financial condition of the licensee or the
13 interests of its customers.

14 ➔Section 835. KRS 286.11-009 is amended to read as follows:

15 (1) Each application for a license under this subtitle shall be made in writing and in a
16 form and medium prescribed by regulation by the commissioner~~executive~~
17 ~~director~~}. The application shall state or contain the following:

18 (a) The legal name of the applicant, business addresses, and residential addresses,
19 if applicable, of the applicant, and any fictitious or trade name used by the
20 applicant in conducting its business;

21 (b) The legal name, residential and business addresses, date of birth, Social
22 Security number, and employment history for the five (5) year period
23 preceding the filing of the application, of the applicant's proposed responsible
24 individual;

25 (c) A list and description of any criminal conviction, other than a traffic violation,
26 of the applicant and proposed responsible individual, for the ten (10) year
27 period preceding the filing of the application. The commissioner~~executive~~

- 1 ~~director~~] may request a copy of any criminal conviction from the applicant,
 2 which shall be promptly provided by the applicant to the
 3 commissioner~~[executive director]~~ within ten (10) working days of the request;
- 4 (d) A list and description of any material litigation of the applicant and proposed
 5 responsible individual, for the ten (10) year period preceding the filing of the
 6 application. The commissioner~~[executive director]~~ may request a copy of any
 7 material litigation from the applicant, which shall be promptly provided by the
 8 applicant to the commissioner~~[executive director]~~ within ten (10) working
 9 days of the request;
- 10 (e) A description of the activities conducted by the applicant and a history of
 11 operations, including, if applicable, a description of any money transmission
 12 that has been previously provided by the applicant in this state;
- 13 (f) A list of other states or countries in which the applicant is licensed to engage
 14 in money transmission or other similar money services, and any license
 15 revocations, suspensions, restrictions, or other disciplinary action taken
 16 against the applicant in another state or country;
- 17 (g) A list of any license revocations, suspensions, restrictions, or other
 18 disciplinary action taken against any money transmission business involving
 19 the proposed responsible individual;
- 20 (h) A description of the source of money and credit to be used by the applicant to
 21 provide money transmissions;
- 22 (i) A sample form of contract for an agent;
- 23 (j) A sample form of payment instrument;
- 24 (k) Information concerning any bankruptcy, reorganization, or receivership
 25 proceedings involving or affecting the applicant or the proposed responsible
 26 individual;
- 27 (l) A list identifying the name, physical location or locations, and telephone

1 number at which the applicant and its proposed agents intend to conduct
 2 money transmission business in the state at the time of the filing of the license
 3 application;

4 (m) The name, address, and telephone number of the clearing bank or banks on
 5 which the applicant's payment instruments will be drawn or through which
 6 such payment instruments will be payable;

7 (n) A copy of the written procedures that will be provided by the applicant or
 8 licensee to its agent or agents;

9 (o) That neither the applicant, nor any executive officer, nor person who exercises
 10 control over the applicant, nor key shareholder, nor any proposed agent, nor
 11 the proposed responsible individual, is listed on the specially designated
 12 nationals and blocked persons list prepared by the United States Department
 13 of the Treasury or the United States Department of State under Presidential
 14 Executive Order No. 13224 as a potential threat to commit terrorist acts and to
 15 finance terrorist acts; and

16 (p) Any other information regarding the background, experience, character,
 17 financial responsibility, or general fitness of the applicant, the applicant's
 18 responsible individual, or agent that the commissioner~~{executive director}~~
 19 may require by rule or order.

20 (2) If the applicant is a corporation, limited liability company, partnership, or other
 21 entity, then the applicant shall also provide:

22 (a) A copy of the applicant's filed articles of incorporation;

23 (b) The name, address, and telephone number of the registered process agent of
 24 the applicant in this state;

25 (c) If applicable, then a certificate of good standing from the state or country in
 26 which the applicant was incorporated or formed;

27 (d) A description of the corporate structure of the applicant, including the identity

1 of any parent or subsidiary of the applicant, and the disclosure of whether any
 2 parent or subsidiary is publicly traded on any stock exchange;

3 (e) The legal name, any fictitious or trade name, all business and residence
 4 addresses, date of birth, Social Security number, and employment history for
 5 the ten (10) year period preceding the filing of the application for each
 6 executive officer, board director, key shareholder, or person that has control of
 7 the applicant;

8 (f) Copies and description of material litigation for the ten (10) year period prior
 9 to the filing date of the application of every executive officer or key
 10 shareholder of the applicant;

11 (g) Copies and descriptions of criminal convictions, other than traffic violations,
 12 for the ten (10) year period prior to the filing date of the application of every
 13 executive officer or key shareholder of the applicant;

14 (h) A copy of the applicant's audited financial statements for the most recent
 15 fiscal year or, if the applicant is a wholly owned subsidiary of another
 16 corporation, the most recent audited consolidated annual financial statement
 17 of the parent corporation or the applicant's most recent audited consolidated
 18 annual financial statements and, in each case, if available, for the two (2) year
 19 period preceding the filing of the application;

20 (i) A copy of the applicant's unconsolidated financial statements for the current
 21 fiscal year, whether audited or not, and, if available, for the two (2) year
 22 period preceding the filing of the application;

23 (j) If the applicant is publicly traded, then a copy of the most recent report filed
 24 with the United States Securities and Exchange Commission pursuant to 15
 25 U.S.C. sec. 78m;

26 (k) If the applicant is a wholly owned subsidiary of:

27 1. A corporation publicly traded in the United States, then a copy of

1 audited financial statements for the parent corporation for the most
 2 recent fiscal year or a copy of the parent corporation's most recent report
 3 filed with the United States Securities and Exchange Commission
 4 pursuant to 15 U.S.C. sec. 78m; or

5 2. A corporation publicly traded outside of the United States, a copy of
 6 similar documentation for the most recent fiscal year filed with the
 7 regulator of the parent corporation's domicile outside the United States.

8 (3) Every corporate applicant, at the time of filing of an application for a license under
 9 this subtitle and at all times after a license is issued, shall be in good standing in the
 10 state of its incorporation.

11 (4) Every applicant shall, at the time of the filing of an application for a license under
 12 this subtitle and at all times after a license is issued, be registered or qualified to do
 13 business in this state.

14 (5) The commissioner~~executive director~~ is authorized, for good cause, to waive any
 15 requirement of this section with respect to any license application or to permit a
 16 license applicant to submit substituted information in its license application in lieu
 17 of the information required by this section.

18 ➔Section 836. KRS 286.11-013 is amended to read as follows:

19 (1) Each application shall be accompanied by a surety bond or other similar security
 20 acceptable to the commissioner~~executive director~~, in the amount of at least five
 21 hundred thousand dollars (\$500,000). The commissioner~~executive director~~ may
 22 increase the amount of the surety bond, or other similar security, to a maximum of
 23 five million dollars (\$5,000,000), upon the basis of the financial condition of an
 24 applicant, as evidenced by net worth, transaction volume, or other relevant criteria
 25 that the commissioner~~executive director~~ may establish by order or rule.

26 (2) The surety bond, or other similar security acceptable to the commissioner~~executive~~
 27 ~~director~~, shall be in a form satisfactory to the commissioner~~executive director~~

1 and shall hold and bind the principal and surety to the Commonwealth of Kentucky
 2 for the benefit of any claimants against the licensee to secure the faithful
 3 performance of the obligations of the licensee with respect to the receipt, handling,
 4 transmission, and payment of money in connection with the sale and issuance of
 5 payment instruments or money transmissions by the licensee and its agent. The
 6 aggregate liability of the surety bond or other similar security accepted shall not
 7 exceed the principal sum of the bond.

8 (3) A claimant may maintain a civil action on the surety bond, or other similar security
 9 acceptable to the commissioner~~[executive director]~~, against a licensee, or the
 10 commissioner~~[executive director]~~ may maintain an action on behalf of the claimant,
 11 in the Franklin Circuit Court, or in any other court of competent jurisdiction, either
 12 in one (1) action or in successive actions.

13 (4) A licensee shall at all times maintain a surety bond, or other similar security
 14 acceptable to the commissioner~~[executive director]~~, in the amount and type
 15 required under subsections (1) and (2) of this section. The commissioner~~[executive~~
 16 ~~director]~~ may, at any time, accept a substitute or replacement surety bond, or other
 17 acceptable similar security, from the licensee, provided that the requirements of
 18 subsections (1) and (2) are met.

19 (5) The surety bond, or other similar security acceptable to the commissioner~~[executive~~
 20 ~~director]~~, shall be continuous and remain in effect until canceled. The licensee shall
 21 provide the commissioner~~[executive director]~~ with at least a thirty (30) day written
 22 notice of the intent to cancel the surety bond or other similar security accepted by
 23 the commissioner~~[executive director]~~. The cancellation of the surety bond or other
 24 acceptable security shall not affect any liability incurred or accrued during the thirty
 25 (30) day notice of cancellation period.

26 (6) A surety bond, or other security acceptable to the commissioner~~[executive director]~~,
 27 shall remain in place and cover claims for at least five (5) years after the date of any

1 violation of this subtitle by the licensee or its agent, or the date the licensee ceases
 2 providing money transmission services in this state, whichever date occurs last. The
 3 commissioner~~executive director~~ may permit the licensee to reduce or eliminate
 4 the surety bond, or other similar security approved by the commissioner~~executive~~
 5 ~~director~~, prior to the expiration of the five (5) years, to the extent that the amount
 6 of the licensee's payment instruments outstanding in this state are reduced.

7 ➔Section 837. KRS 286.11-015 is amended to read as follows:

- 8 (1) Every licensee shall, at all times, maintain permissible investments that have a
 9 market value that is computed in accordance with generally accepted accounting
 10 principles. These investments shall not be less than the aggregate amount of all
 11 outstanding payment instruments.
- 12 (2) Except to the extent otherwise limited in subsection (5) of this section, the
 13 following investments are permissible for a licensee:
 - 14 (a) Cash, time deposits, savings deposits, demand deposits, a certificate of
 15 deposit, or senior debt obligation of an insured depository institution as
 16 defined in 12 U.S.C. sec. 1813 or as defined under 12 U.S.C. sec. 1781;
 - 17 (b) Banker's acceptance or bill of exchange that is eligible for purchase upon
 18 endorsement by a member bank of the federal reserve system and is eligible
 19 for purchase by a federal reserve bank;
 - 20 (c) An investment bearing a rating of one (1) of the three (3) highest grades as
 21 defined by a nationally recognized organization that rates securities;
 - 22 (d) An investment security that is an obligation of the United States or a
 23 department, agency, or instrumentality thereof; an investment in an obligation
 24 that is guaranteed fully as to principal and interest by the United States; or an
 25 investment in an obligation of a state or a governmental subdivision, agency,
 26 or instrumentality thereof;
 - 27 (e) Receivables that are payable to a licensee from its agents, in the ordinary

1 course of business, pursuant to contracts which are not past due or doubtful of
 2 collection, if the aggregate amount of receivables under this paragraph does
 3 not exceed twenty percent (20%) of the total permissible investments of a
 4 licensee and the licensee does not hold, at one (1) time, receivables under this
 5 paragraph in any one (1) person aggregating more than ten percent (10%) of
 6 the licensee's total permissible investments.

7 (3) The following investments are permissible under this section, but only to the extent
 8 specified as follows:

9 (a) An interest-bearing bill, note, bond, or debenture of a person whose equity
 10 shares are traded on a national securities exchange or on a national over-the-
 11 counter market, if the aggregate of investments under this paragraph do not
 12 exceed twenty percent (20%) of the total permissible investments of a licensee
 13 and the licensee does not, at one (1) time, hold investments under this
 14 paragraph in any one (1) person aggregating more than ten percent (10%) of
 15 the licensee's total permissible investments;

16 (b) A share of a person traded on a national securities exchange or a national
 17 over-the-counter market or a share or certificate issued by an open-end
 18 management investment company that is registered with the United States
 19 Securities and Exchange Commission pursuant to 15 U.S.C. secs. 80a-1 to
 20 80a-64, and whose portfolios are restricted by the management company's
 21 investment policy to shares of a person traded on a national securities
 22 exchange or a national over-the-counter market, if:

23 1. The aggregate of investments under this paragraph does not exceed
 24 twenty percent (20%) of the total permissible investments of a licensee;
 25 and

26 2. The licensee does not, at one (1) time, hold investments under this
 27 paragraph in any one (1) person aggregating more than ten percent

1 (10%) of the licensee's total permissible investments; and

2 (c) A demand-borrowing agreement made to a corporation or a subsidiary of a
3 corporation whose securities are traded on a national securities exchange, if:

4 1. The aggregate amount of principal and interest outstanding under
5 demand-borrowing agreements under this paragraph does not exceed
6 twenty percent (20%) of the total permissible investments of a licensee;
7 and

8 2. The licensee does not, at one (1) time, hold principal and interest
9 outstanding under demand-borrowing agreements under this paragraph
10 with any one (1) person aggregating more than ten percent (10%) of the
11 licensee's total permissible investments.

12 (4) The aggregate of investments under subsection (3) of this section shall not exceed
13 fifty percent (50%) of the total permissible investments of a licensee.

14 (5) The commissioner~~executive director~~ may limit the extent to which a type of
15 investment within a class of permissible investments may be considered a
16 permissible investment, except for money, time deposits, savings deposits, demand
17 deposits, and certificates of deposit issued by a federally insured financial
18 institution. The commissioner~~executive director~~ may by rule or order allow other
19 types of investments that the commissioner~~executive director~~ determines to be
20 substantially equivalent to other permissible investments in regards to safety and
21 soundness.

22 (6) Permissible investments, even if commingled with other assets of the licensee, shall
23 be deemed by operation of law to be held in trust for the benefit of the purchasers
24 and holders of the licensee's outstanding payment instruments in the event of
25 insolvency or bankruptcy of the licensee.

26 ➔Section 838. KRS 286.11-019 is amended to read as follows:

27 (1) Upon the filing of a complete application, the commissioner~~executive director~~

1 shall investigate the competence, experience, character, financial condition, and
 2 responsibility of the applicant. The commissioner~~{executive-director}~~ may conduct
 3 an on-site investigation of the applicant, the reasonable cost of which shall be paid
 4 by the applicant. The commissioner~~{executive-director}~~ shall review each
 5 application on a case-by-case basis. If the commissioner~~{executive-director}~~ finds
 6 that the applicant has the competence, experience, character, financial condition,
 7 and responsibility, and has fulfilled the requirements of this subtitle, then the
 8 commissioner~~{executive-director}~~ shall issue a license to the applicant authorizing
 9 the applicant to engage in the licensed activities in this state. If any of these
 10 requirements has not been met, then the commissioner~~{executive-director}~~ shall
 11 deny the application, in writing setting out the reason for the denial.

12 (2) The commissioner~~{executive-director}~~ shall approve, or deny in writing, every
 13 completed application for a license within one hundred twenty (120) days from the
 14 date a complete application is submitted, which period may be extended for good
 15 cause by the commissioner~~{executive-director}~~.

16 (3) The commissioner~~{executive-director}~~ may deny a license application where the
 17 applicant does not meet the requirements of this subtitle or for any of the grounds
 18 under KRS 286.11-039.

19 (4) The commissioner~~{executive-director}~~ may probate, place conditions upon, or
 20 refuse to issue or renew any license issued under this subtitle.

21 (5) The commissioner~~{executive-director}~~ may in writing deny or refuse to renew the
 22 designation of an agent by a licensee for any of the grounds found in KRS 286.11-
 23 041.

24 (6) A person is deemed to have received a copy of a written denial issued by the
 25 commissioner~~{executive-director}~~ in this section within three (3) days of its
 26 mailing.

27 (7) Any person who has had his or her license application or designation as an agent

denied by the commissioner~~[executive director]~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B. The written application shall be filed with the commissioner~~[executive director]~~ within twenty (20) days of the date of the denial.

(8) A written application for an appeal shall be made in good faith and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.

(9) Any person who has had his or her license application, or designation as an agent, denied by the commissioner~~[executive director]~~ may not file another application for a license, or designation as an agent, under this subtitle for one (1) year after the date of the denial.

→ Section 839. KRS 286.11-021 is amended to read as follows:

(1) A licensee under this subtitle shall pay an annual renewal fee of five hundred dollars (\$500) no later than September 20 of each year.

(2) The renewal fee shall be accompanied by a written renewal report, in a form prescribed by the commissioner~~[executive director]~~, which shall include:

(a) A copy of the licensee's most recent audited annual financial statement, or if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation, or the licensee's most recent audited financial statement;

(b) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, a list of the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the

1 commissioner~~[executive director]~~ on any other report required to be filed
2 under this subtitle;

3 (d) A list of the licensee's permissible investments under this subtitle and a
4 certification that the licensee continues to maintain permissible investments
5 according to the requirements set forth in KRS 286.11-015; and

6 (e) A list of the locations, including names, physical addresses, and telephone
7 numbers, in this state where the licensee or agent of the licensee engages in
8 money transmission.

9 (3) The failure of a licensee to pay the annual renewal fee or file the written renewal
10 report, by the renewal date of September 20, shall result in the expiration of the
11 licensee's license by operation of law by September 30 of the same year. The
12 commissioner~~[executive director]~~ may reinstate the license if the licensee becomes
13 compliant with this subtitle and pays a civil penalty equal to the amount of the
14 annual renewal fee, as specified in this section, within thirty (30) days of the
15 expiration of the license.

16 ➔Section 840. KRS 286.11-023 is amended to read as follows:

17 A licensee shall file a written report with the commissioner~~[executive director]~~ within
18 fifteen (15) business days of its knowledge of the occurrence of any one (1) of the events
19 listed below. In the written report, the licensee shall describe the event and its expected
20 impact on the licensee's activities in the state:

21 (1) Any material change in information provided in a licensee's application or renewal
22 report;

23 (2) The cancellation or other impairment of the licensee's bond or other similar security
24 accepted by the commissioner~~[executive director]~~;

25 (3) Insolvency or the filing for bankruptcy or reorganization under the United States
26 Bankruptcy Code, 11 U.S.C. secs. 101 to 110, by the licensee, responsible
27 individual, any agent, or any key officers or directors;

- 1 (4) The filing of a petition by or against the licensee, or any agent of the licensee, for
2 receivership, the commencement of any other judicial or administrative proceeding
3 for its dissolution or reorganization, or the making of a general assignment for the
4 benefit of its creditors;
- 5 (5) The filing of any material litigation against the licensee by any state or federal
6 governmental authority, or by any country in which the licensee engages in the
7 business of money transmission or is licensed;
- 8 (6) Any felony indictment of the licensee, responsible individual, agent, or any of its
9 key officers or directors;
- 10 (7) Any felony conviction of the licensee, responsible individual, agent, or any of its
11 key officers or directors;
- 12 (8) Any misdemeanor conviction of the licensee, responsible individual, agent, or any
13 of its key officers or directors of any misdemeanor involving the business of money
14 transmission; and
- 15 (9) Any misdemeanor conviction of the licensee, responsible individual, agent, or any
16 of its key officers or directors of any misdemeanor involving fraud, theft, or breach
17 of trust.

18 ➔Section 841. KRS 286.11-025 is amended to read as follows:

- 19 (1) A licensee shall give the commissioner~~[executive-director]~~ written notice of a
20 proposed change of control within fifteen (15) days after learning of the proposed
21 change of control and at least thirty (30) days prior to the proposed change of
22 control.
- 23 (2) A licensee shall file a written request for approval of the acquisition with the
24 commissioner~~[executive-director]~~. A licensee shall also submit, with the notice, a
25 nonrefundable fee of one hundred dollars (\$100).
- 26 (3) After review of a request for approval under subsection (1) of this section, the
27 commissioner~~[executive-director]~~ may require the licensee to provide additional

1 information concerning the proposed person in control.

2 (4) The commissioner~~[executive director]~~ shall approve a request for change of control
3 under subsection (1) of this section if, after investigation, the
4 commissioner~~[executive director]~~ determines that the person or group of persons
5 requesting approval has the competence, experience, character, financial condition,
6 and responsibility to operate the licensee or person in control of the licensee in a
7 lawful and proper manner and that the interest of the public will not be jeopardized
8 by the change of control.

9 (5) The following persons are exempt from the requirements of subsection (1) of the
10 section, but the licensee shall notify the commissioner~~[executive director]~~, within
11 fifteen (15) days after learning of a change of control:

12 (a) A person that acts as a proxy for the sole purpose of voting at a designated
13 meeting of the security holders or holders of voting interests of a licensee or
14 person in control of a licensee;

15 (b) A person that acquires control of a licensee by devise or descent;

16 (c) A person that acquires control as a personal representative, custodian,
17 guardian, conservator, or trustee, or as an officer appointed by a court of
18 competent jurisdiction or by operation of law; and

19 (d) A person that the commissioner~~[executive director]~~ exempts by regulation or
20 order if it is in the public interest to do so.

21 (6) Subsection (1) of this section does not apply to public offerings of securities.

22 (7) Before filing a request for approval to acquire control, a person may request in
23 writing a determination from the commissioner~~[executive director]~~ as to whether
24 the person would be considered a person in control of a licensee upon
25 consummation of a proposed transaction. If the commissioner~~[executive director]~~
26 determines that the person would not be a person in control of a licensee, then the
27 commissioner~~[executive director]~~ may enter an order or respond in writing, to that

1 effect, and the proposed person and transaction shall not be subject to the
2 requirements of this section.

3 ➔Section 842. KRS 286.11-027 is amended to read as follows:

4 (1) The commissioner~~[executive director]~~ may conduct an examination or investigation
5 of a licensee or any of its agents, as it relates to the business of money transmission.

6 (2) The commissioner~~[executive director]~~ may conduct an examination or investigation
7 in conjunction with representatives of other agencies of this state or agencies of
8 another state or of the federal government. Instead of an examination, the
9 commissioner~~[executive director]~~ may accept the examination report of an agency
10 of this state or of another state or of the federal government or a report prepared by
11 an independent licensed or certified public accountant. The reasonable expenses
12 incurred by the department~~[office]~~, other Kentucky agencies, agencies of another
13 state, agencies of the federal government, or an independent licensed or certified
14 accountant in making such examination, investigation, or report shall be borne by
15 the licensee.

16 (3) A joint examination or an acceptance of an examination report does not preclude
17 the commissioner~~[executive director]~~ from conducting an examination as provided
18 by law. A joint report or a report accepted under this subsection is an official report
19 of the commissioner~~[executive director]~~ for all purposes.

20 (4) A licensee or agent is deemed to consent to the commissioner's~~[executive
21 director's]~~ examination or investigation, whether or not prior notice is given to the
22 licensee or agent, of the books, records, and business operations of the licensee or
23 agent of the licensee.

24 (5) A report of examination of a licensee under this section shall be considered
25 confidential and privileged and not subject to disclosure under the Kentucky Open
26 Records Act, KRS 61.870 to 61.884. However, a licensee may disclose a Kentucky
27 report of examination to a financial institution upon written request from the

1 financial institution for the purpose of assisting the financial institution in its
 2 compliance with the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R.
 3 pt. 103. The licensee shall provide written notice to the commissioner~~executive~~
 4 ~~director~~] of the disclosure of the Kentucky report of examination at the same time
 5 that disclosure is made to the financial institution.

6 ➔ Section 843. KRS 286.11-029 is amended to read as follows:

7 (1) Each licensee shall make, keep, and preserve the following books, accounts, and
 8 other records for a period of five (5) years, and these records shall be open to
 9 inspection by the commissioner~~executive director~~:

- 10 (a) A record or records of each payment instrument sold;
- 11 (b) A general ledger containing all assets, liability, capital, income, and expense
 12 accounts, which general ledger shall be posted at least monthly;
- 13 (c) Bank statements and bank reconciliation records;
- 14 (d) Records of outstanding payment instruments;
- 15 (e) Records of each payment instrument paid within the five (5) year period;
- 16 (f) A list of the names, addresses, and telephone numbers of all of the licensee's
 17 agents;
- 18 (g) Copies of all currency transaction reports and suspicious activity reports filed
 19 in compliance with KRS 286.11-031; and
- 20 (h) Any other record the commissioner~~executive director~~ may reasonably
 21 require by order or regulation.

22 (2) Records required to be maintained in this subtitle may be kept in an electronic
 23 retrievable format or other similar form of medium.

24 (3) Records may be maintained by a licensee or agent at a location other than within
 25 this state so long as they are made accessible to the commissioner~~executive~~
 26 ~~director~~] upon seven (7) business days' written notice.

27 ➔ Section 844. KRS 286.11-031 is amended to read as follows:

1 (1) Every licensee and its agent shall file with the commissioner~~[executive director]~~ all
 2 reports by federal currency reporting, recordkeeping, and suspicious transaction
 3 reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to
 4 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money
 5 laundering, for every transaction in this state. Every licensee and its agent shall
 6 maintain copies of these reports in its records in compliance with KRS 286.11-029.

7 (2) The timely filing of a complete and accurate report required under subsection (1) of
 8 this section with the appropriate federal agency is deemed compliance with the
 9 requirements of subsection (1) of this section, unless the commissioner~~[executive~~
 10 ~~director]~~ notifies the licensee that reports of the type required in subsection (1) of
 11 this section are not being regularly and comprehensively transmitted to the federal
 12 agency.

13 ➔Section 845. KRS 286.11-033 is amended to read as follows:

14 (1) Documents, materials, reports, or other information in the possession or control of
 15 the commissioner~~[executive director]~~ that is provided according to this subtitle
 16 shall be confidential by law and privileged, and shall not be subject to the Kentucky
 17 Open Records Act, KRS 61.870 to 61.884. These documents, materials, reports, or
 18 other information shall not be subject to subpoena, and shall not be subject to
 19 discovery or admissible in evidence in any civil action, unless, after notice to the
 20 commissioner~~[executive director]~~ and a hearing, a court of competent jurisdiction
 21 determines that the commissioner~~[executive director]~~ would not be prejudiced.
 22 However, the commissioner~~[executive director]~~ may use the documents, materials,
 23 reports, or other information in the furtherance of any regulatory or legal action
 24 brought as a part of the commissioner's~~[executive director's]~~ official duties.

25 (2) Neither the commissioner~~[executive director]~~ nor any person who received
 26 documents, materials, reports, or other information while acting under the authority
 27 of the commissioner~~[executive director]~~ shall be permitted or required to testify in

1 any civil action concerning any confidential documents, materials, reports, or
 2 information subject to subsection (1) of this section.

3 (3) In order to assist in the performance of the commissioner's~~[executive director's]~~
 4 duties, the commissioner~~[executive director]~~:

5 (a) May share documents, materials, reports, or other information, including the
 6 confidential and privileged documents, materials, reports, or information
 7 subject to subsections (1) and (2) of this section, with other state, federal, and
 8 international regulatory agencies, with the Money Transmitter Regulators
 9 Association, its affiliates or subsidiaries, and with local, state, federal, and
 10 international law enforcement authorities, if the recipient agrees to maintain
 11 the confidentiality and privileged status of the documents, materials, reports,
 12 or other information;

13 (b) May receive documents, materials, reports, or other information, including
 14 otherwise confidential and privileged documents, materials, reports, or
 15 information from the Money Transmitter Regulators Association, its affiliates
 16 or subsidiaries, and from regulatory and law enforcement officials of other
 17 foreign or domestic jurisdictions, and shall maintain as confidential and
 18 privileged any documents, materials, reports, or information received with
 19 notice or the understanding that they are confidential and privileged under the
 20 laws of the jurisdiction that is the source of the documents, materials, reports,
 21 or information;

22 (c) May enter into agreements governing the sharing and use of information,
 23 including the furtherance of any regulatory or legal action brought as part of
 24 the recipient's official duties;

25 (d) May disclose to the public a list of persons licensed under this subtitle or the
 26 aggregate financial data concerning those licensees; and,

27 (e) May disclose to the public any order issued under this subtitle that is the result

of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.

- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the commissioner~~executive director~~ under this subsection or as a result of sharing as authorized in subsection (3) of this section.

➔Section 846. KRS 286.11-035 is amended to read as follows:

Licensees desiring to conduct licensed activities through agents shall authorize each agent to operate pursuant to an express written contract, which shall include the following provisions:

- (1) That the licensee designates the person as its agent with authority to engage in money transmission on behalf of the licensee as authorized under this subtitle;
- (2) That the agent shall operate in full compliance with this subtitle, and rules promulgated under this subtitle, and any order issued by the commissioner~~executive director~~ pursuant to this subtitle;
- (3) That neither a licensee nor an agent of the licensee may authorize subagents;
- (4) That the agent shall timely remit all money legally due to the licensee in accordance with the terms of the written contract between the licensee and the agent;
- (5) That the licensee and agent are subject to regulation by the commissioner~~executive director~~; and
- (6) That the licensee and agent shall comply with applicable federal and state law.

➔Section 847. KRS 286.11-037 is amended to read as follows:

- (1) An agent shall not make any fraudulent statements or misrepresentations to a licensee or to the commissioner~~executive director~~.
- (2) All money transmissions, or sale, or issuance of payment instrument activities conducted by agents shall be strictly in accordance with the licensee's written procedures provided to the agent.

- 1 (3) An agent shall timely remit all money legally due to the licensee in accordance with
 2 the terms of the contract between the licensee and the agent. The
 3 commissioner~~executive director~~ shall have the discretion to set, by regulation or
 4 order, the maximum remittance time.
- 5 (4) An agent shall act only as authorized under the contract with the licensee.
- 6 (5) All funds, less fees, received by an agent of a licensee from the sale or delivery of a
 7 payment instrument issued by a licensee or received by an agent for transmission
 8 shall, from the time the funds are received by the agent until such time when the
 9 funds or an equivalent amount are remitted by the agent to the licensee, constitute
 10 trust funds owned by and belonging to the licensee. If an agent commingles any of
 11 these funds with any other funds or property owned or controlled by the agent, then
 12 all commingled proceeds and other property shall be impressed with a trust in favor
 13 of the licensee in an amount equal to the amount of the proceeds due the licensee.
- 14 (6) An agent shall report to the licensee the theft, forgery, or loss of payment
 15 instruments within twenty-four (24) hours from the time it knew of the theft,
 16 forgery, or loss.

17 ➔Section 848. KRS 286.11-039 is amended to read as follows:

- 18 (1) The commissioner~~executive director~~ may issue a written order to suspend or
 19 revoke a license issued under this subtitle if the commissioner~~executive director~~
 20 finds that:
- 21 (a) The licensee no longer meets the requirements to hold a license under this
 22 subtitle;
- 23 (b) Any fact or condition exists that, if it had existed at the time the licensee
 24 applied for its license, would have been grounds for denying the application;
- 25 (c) The licensee's net worth, as determined in accordance with generally accepted
 26 accounting principles, falls below the required net worth as prescribed in KRS
 27 286.11-011, and the licensee, after ten (10) days written notice from the

1 commissioner~~[executive—director]~~, fails to take such action as the
 2 commissioner~~[executive—director]~~ deems necessary to remedy such
 3 deficiency;

4 (d) The licensee violates any provision of this subtitle, any administrative
 5 regulation promulgated thereunder, or order of the commissioner~~[executive~~
 6 ~~director]~~ issued under authority of this subtitle, or any other state law or
 7 regulation related to the business of money transmission;

8 (e) The licensee is conducting its business in an unsafe or unsound manner;

9 (f) The licensee engages in an unfair and deceptive act or practice;

10 (g) The licensee engages in fraud, intentional misrepresentation, or gross
 11 negligence;

12 (h) The licensee is insolvent;

13 (i) The licensee has suspended payment of its obligations or has made an
 14 assignment for the benefit of its creditors;

15 (j) The licensee has applied for an adjudication of bankruptcy, reorganization,
 16 arrangement, or other relief under the United States Bankruptcy Code, 11
 17 U.S.C. secs. 101-110;

18 (k) The licensee fails to cooperate in an examination, investigation, or subpoena
 19 issued by the commissioner~~[executive director]~~;

20 (l) The licensee fails to make any report required by this subtitle;

21 (m) The licensee has been found to have violated any of the recordkeeping and
 22 reporting requirements of the United States government including 31 U.S.C.
 23 secs. 5311 to 5332 and 31 C.F.R. pt. 103;

24 (n) The competence, experience, character, financial condition, or responsibility
 25 of the licensee indicates that it is not in the public interest to permit the
 26 licensee to continue to provide money transmission services;

27 (o) The licensee has been convicted of a felony;

- 1 (p) The licensee has been convicted of a misdemeanor related to the business of
2 money transmission;
- 3 (q) The licensee has been convicted of a misdemeanor involving theft, fraud, or
4 breach of trust;
- 5 (r) The licensee has failed to terminate or suspend its agent's authority to act on
6 its behalf when the licensee knew, or has been given reasonable notice that its
7 agent violated, or is about to violate, a material provision of this subtitle, an
8 administrative regulation promulgated thereunder, or an order of the
9 commissioner~~[executive director]~~, or any grounds that are found in KRS
10 286.11-041; or
- 11 (s) The licensee, its responsible individual, or any agent, key shareholder,
12 executive officer, director, or other person in control of the licensee are listed
13 or become listed on the specially designated nationals and blocked persons list
14 prepared by the United States Department of the Treasury or United States
15 Department of State under Presidential Executive Order No. 13224 as a
16 potential threat to commit terrorist acts or to finance terrorist acts.
- 17 (2) A licensee who has had his or her license revoked or suspended by the
18 commissioner~~[executive director]~~ may file a written application for an
19 administrative hearing in accordance with KRS Chapter 13B.
- 20 (3) A person is deemed to have received a copy of the written order of revocation or
21 suspension with three (3) days of its mailing.
- 22 (4) A written application for an appeal shall be made with the commissioner~~[executive~~
23 ~~director]~~ within twenty (20) days of the date of the order of suspension or
24 revocation and shall be made in good faith and shall briefly state the reason or
25 reasons the person is aggrieved, together with the grounds to be relied upon.
- 26 (5) The commissioner~~[executive director]~~ shall not issue a license again under this
27 subtitle to any person whose license has been revoked until three (3) years after the

1 date of the revocation, and thereafter, not until the person again qualifies under the
 2 applicable provisions of this subtitle. A person whose license has been revoked
 3 twice shall be deemed permanently revoked and shall not again be eligible for a
 4 license under this subtitle.

- 5 (6) In determining whether a licensee is engaging in an unsafe or unsound practice
 6 under subsection (1)(e) of this section, the commissioner~~{executive-director}~~ may
 7 consider the size and condition of the licensee's provision of money transmissions,
 8 the magnitude of the loss, the gravity of the violation of this subtitle, the
 9 administrative regulation adopted, or order issued under this subtitle, any action
 10 taken by another state or federal government against the licensee, or the previous
 11 conduct of the licensee.

12 ➔Section 849. KRS 286.11-041 is amended to read as follows:

- 13 (1) The commissioner~~{executive-director}~~ may issue a written order suspending or
 14 revoking the designation of an agent if the commissioner~~{executive-director}~~ finds
 15 that:
- 16 (a) The agent violates this subtitle or a rule adopted or an order issued under this
 17 subtitle;
 - 18 (b) The agent does not cooperate with an examination, investigation, or subpoena
 19 issued by the commissioner~~{executive-director}~~;
 - 20 (c) The agent has engaged in fraud, intentional misrepresentation, or gross
 21 negligence;
 - 22 (d) The agent has been convicted of a felony;
 - 23 (e) The agent has been convicted of a misdemeanor related to the business of
 24 money transmission;
 - 25 (f) The agent has been convicted of a misdemeanor involving theft, fraud, or
 26 breach of trust;
 - 27 (g) The competence, experience, character, or general fitness of the agent or a

- 1 person in control of the agent indicates that it is not in the public interest to
 2 permit the agent to be engaged in the business of money transmission;
- 3 (h) The agent is engaged in or is engaging in an unsafe or unsound practice;
- 4 (i) The agent is engaged in, or is engaging in, an unfair and deceptive act or
 5 practice as that act or practice relates to the business of money transmission;
- 6 (j) The agent is insolvent;
- 7 (k) The agent has applied for an adjudication of bankruptcy, reorganization,
 8 arrangement, or other relief under the United States Bankruptcy Code, 11
 9 U.S.C. secs. 101 to 110; or
- 10 (l) The agent fails to timely remit all money legally due to its licensee as required
 11 by this subtitle; or
- 12 (m) The agent, any executive officer, or other person in control of the agent is
 13 listed or become listed on the specially designated nationals and blocked
 14 persons list prepared by the United States Department of the Treasury or
 15 United States Department of State under Presidential Executive Order No.
 16 13224 as a potential threat to commit terrorist acts or to finance terrorist acts.
- 17 (2) In determining whether an agent is engaging in an unsafe or unsound practice under
 18 subsection (1)(h) of this section, the commissioner~~[executive director]~~ may
 19 consider the size and condition of the agent's provision of money transmissions, the
 20 magnitude of the loss, the gravity of the violation of this subtitle, the administrative
 21 regulation adopted, or order issued under this subtitle, any action taken by another
 22 state or federal government against the agent, or the previous conduct of the agent.
- 23 (3) Any person who has his or her designation as an agent revoked or suspended by the
 24 commissioner~~[executive director]~~ may file a written application for an
 25 administrative hearing in accordance with KRS Chapter 13B.
- 26 (4) An agent is deemed to have received a copy of the written order of revocation or
 27 suspension within three (3) days of its mailing.

- 1 (5) A written application for an appeal shall be made with the commissioner~~executive~~
 2 ~~director~~ within twenty (20) days of the date of the order of suspension or
 3 revocation in good faith and shall briefly state the reason or reasons the agent is
 4 aggrieved, together with the grounds to be relied upon.
- 5 (6) The commissioner~~executive director~~ shall not designate a person as an agent
 6 again under this subtitle where the designation of an agent has been revoked, until
 7 after three (3) years after the date of revocation, and thereafter, not until the person
 8 again qualifies under the applicable provisions of this subtitle. Any person whose
 9 designation as an agent has been revoked twice by the commissioner~~executive~~
 10 ~~director~~ shall be deemed permanently revoked and shall not again be eligible for
 11 designation as an agent under this subtitle.
- 12 ➔Section 850. KRS 286.11-043 is amended to read as follows:
- 13 (1) If the commissioner~~executive director~~ has reason to believe or determines that a
 14 violation of this subtitle, regulation adopted, or an order issued under this subtitle,
 15 by any person, licensee, or agent has occurred or will occur, then the
 16 commissioner~~he~~ may issue an order to show cause why an order to cease and
 17 desist should not be issued requiring the person, licensee, or agent to cease and
 18 desist from the violation.
- 19 (2) The commissioner~~executive director~~ may enter an order to cease and desist if the
 20 person, licensee, or agent fails to show cause for the violation of the subtitle,
 21 regulation, or order within ten (10) days of the date of the receipt of the order of
 22 show cause.
- 23 (3) The commissioner~~executive director~~ may petition the Franklin Circuit Court, or
 24 any court of competent jurisdiction, for an issuance of a temporary or permanent
 25 injunction, or any other appropriate judicial order, against any person, licensee, or
 26 agent that violates this subtitle, regulation adopted, or order issued.
- 27 (4) An order issued under this section becomes effective when signed by the

1 commissioner~~[executive director]~~. The order shall be delivered by certified mail to
 2 the last known address of the person, licensee, or agent. The order shall be deemed
 3 received by the person, licensee, or agent within three (3) days of its mailing with
 4 the United States Postal Service.

5 (5) The commissioner~~[executive director]~~ may issue an order against a licensee to
 6 cease and desist from providing money transmission through an agent that is subject
 7 of a separate order from the commissioner~~[executive director]~~.

8 (6) An order to cease and desist remains effective and enforceable pending the
 9 completion of an administrative proceeding.

10 ➔Section 851. KRS 286.11-045 is amended to read as follows:

11 (1) If the commissioner~~[executive director]~~ has reason to believe or determines that a
 12 violation of this subtitle or of a regulation adopted, or an order issued under this
 13 subtitle, by a licensee or agent will cause immediate or irreparable harm to the
 14 public health, safety, or welfare, then the commissioner~~[executive director]~~ may
 15 enter an emergency order suspending, limiting, or restricting the licensee's license
 16 or the designation of an agent, without prior notice or hearing.

17 (2) One (1) or more of the following circumstances shall be considered grounds for an
 18 emergency order suspending, limiting, or restricting a license or designation of an
 19 agent under this section:

20 (a) The licensee's or agent's indictment or conviction of a felony for a crime
 21 involving theft, fraud, or breach of trust;

22 (b) The licensee's or agent's indictment or conviction under the USA PATRIOT
 23 Act of 2001, Pub. L. No. 107-56;

24 (c) The suspension or revocation of any other money transmitter license or
 25 equivalent license held by the licensee, or designation held by the agent in
 26 another state or country;

27 (d) The licensee, its responsible individual, or any agent, key shareholder,

1 executive officer, director, or other person in control of the licensee are listed
 2 or become listed on the specially designated nationals and blocked persons list
 3 prepared by the United States Department of the Treasury or United States
 4 Department of State under Presidential Executive Order No. 13224 as a
 5 potential threat to commit terrorist acts or to finance terrorist acts; or

6 (e) Insolvency, or the filing of an application of bankruptcy, reorganization,
 7 arrangement, or other relief under bankruptcy, or an adjudication under the
 8 United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110 by the licensee or
 9 agent.

10 (3) An emergency order issued under this section becomes effective when signed by the
 11 commissioner~~executive director~~. The emergency order shall be delivered by
 12 certified mail to the last known address of the licensee or agent. The order shall be
 13 deemed received by the licensee or agent within three (3) days of its mailing with
 14 the United States Postal Service.

15 (4) A licensee or agent aggrieved by an emergency order issued by the
 16 commissioner~~executive director~~ under this section may file with the
 17 commissioner~~executive director~~ a written appeal for an emergency hearing. The
 18 application for a hearing shall be filed with the commissioner~~executive director~~
 19 within twenty (20) days of the date of the emergency order.

20 (5) Upon receipt of a written appeal by any licensee or agent aggrieved by an
 21 emergency order issued under this section, the commissioner~~executive director~~
 22 shall conduct an emergency hearing as required under KRS 13B.125, within ten
 23 (10) working days from the date of receipt of the appeal, unless the parties agree
 24 otherwise. The hearing officer shall render a written decision affirming, modifying,
 25 or reversing the emergency order within five (5) working days of the completion of
 26 the hearing. The emergency order shall be affirmed if there is substantial evidence
 27 of a violation of law that constitutes an immediate danger to the public health,

1 safety, or welfare.

2 ➔Section 852. KRS 286.11-047 is amended to read as follows:

3 The commissioner~~[executive-director]~~ may levy a civil penalty against a person that
 4 violates any provision of or administrative regulation promulgated under this subtitle or
 5 order issued by the commissioner~~[executive-director]~~ under this subtitle. The civil
 6 penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand
 7 dollars (\$5,000) per day for each day the violation is outstanding, plus the state's costs
 8 and expenses for the examination, investigation, and prosecution of this matter, including
 9 reasonable attorney's fees and court costs.

10 ➔Section 853. KRS 286.11-049 is amended to read as follows:

11 The commissioner~~[executive-director]~~ may enter into a consent order with another person
 12 at any time, in order to resolve a matter arising under this subtitle. A consent order shall
 13 be signed by the person to whom it is issued or by the person's authorized representative
 14 and shall indicate agreement with the terms contained in the order. A consent order may
 15 provide that it does not constitute an admission by a person that this subtitle, or an
 16 administrative regulation promulgated under this subtitle, or an order issued under this
 17 subtitle has been violated. Any consent order that the commissioner~~[executive-director]~~
 18 enters into in order to resolve a matter arising under this subtitle shall be deemed an
 19 administrative action and a public record.

20 ➔Section 854. KRS 286.11-051 is amended to read as follows:

21 The commissioner~~[executive-director]~~ may stay, suspend, or postpone the effective date
 22 of an order issued under this subtitle, pending the administrative proceeding and the
 23 issuance of a final order resulting from the proceeding, upon written request by the
 24 affected person, licensee, or agent.

25 ➔Section 855. KRS 286.11-053 is amended to read as follows:

26 (1) Any person aggrieved by the entry of an order by the commissioner~~[executive~~
 27 ~~director]~~ under this subtitle may file written application for an administrative

1 hearing.

2 (2) The written application for a hearing under this subtitle shall be made in good faith
3 and shall state the reasons or grounds the person is so aggrieved and the remedy
4 sought at the hearing.

5 (3) Any application for a hearing under this subtitle shall be filed with the
6 commissioner~~[executive director]~~ within twenty (20) days of the date of the order.

7 (4) If the commissioner~~[executive director]~~ finds that the application for a hearing is
8 made in good faith, and that the applicant would be aggrieved as claimed if his or
9 her grounds are established, then a hearing shall be held in accordance with KRS
10 Chapter 13B.

11 (5) An appeal from the commissioner~~[executive director]~~ shall be taken only from a
12 final order.

13 (6) The appeal from a final order issued by the commissioner~~[executive director]~~ shall
14 be granted as a matter of right to the Franklin Circuit Court.

15 ➔Section 856. KRS 286.11-055 is amended to read as follows:

16 (1) Any person aggrieved by the conduct of a licensee or agent under this subtitle in
17 connection with the licensee's or agent's regulated activities may file a written
18 complaint with the commissioner~~[executive director]~~ who may investigate the
19 complaint.

20 (2) In the course of the investigation initiated by a complaint or by the
21 commissioner~~[executive director]~~, the commissioner~~[executive director]~~ may:

- 22 (a) Subpoena witnesses;
- 23 (b) Administer oaths;
- 24 (c) Examine any individual under oath; and
- 25 (d) Compel the production of records, books, papers, contracts, or other
26 documents relevant to the investigation.

27 (3) If any person fails to testify or to comply with a subpoena from the

1 commissioner~~[executive—director]~~ under this section, then the
 2 commissioner~~[executive director]~~ may petition the Franklin Circuit Court or any
 3 court of competent jurisdiction for enforcement.

4 (4) The license of any licensee or the designation of an agent under this subtitle who
 5 fails to comply with a subpoena of the commissioner~~[executive director]~~ may be
 6 suspended pending compliance with the subpoena.

7 (5) The commissioner~~[executive director]~~ may investigate all complaints filed by any
 8 person.

9 ➔Section 857. KRS 286.11-061 is amended to read as follows:

10 (1) The department~~[office]~~ shall exercise all administrative functions of the state in
 11 relation to the regulation, supervision, and licensing of money transmitters.

12 (2) The commissioner~~[executive director]~~ may promulgate, amend, and repeal any
 13 administrative regulations, forms, and orders as are necessary to interpret and
 14 enforce the provisions of this subtitle.

15 (3) The commissioner~~[executive director]~~ may request any additional information as
 16 the commissioner~~[he]~~ deems necessary to interpret and carry out any of the
 17 provisions of this subtitle from any applicant, licensee, agent, responsible
 18 individual, controlling person, executive officer, or key shareholder.

19 ➔Section 858. KRS 292.310 is amended to read as follows:

20 When used in this chapter, unless the context otherwise requires:

21 (1) "Agent" means any individual other than a broker-dealer who represents a broker-
 22 dealer or issuer in effecting or attempting to effect purchases or sales of securities,
 23 except as otherwise provided in this chapter.

24 (a) "Agent" does not include an individual who represents:

25 1. An issuer in:

26 a. Effecting a transaction in a security exempted by subsection (1),
 27 (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or

(12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);

b. Effecting transactions exempted by KRS 292.410 unless otherwise required;

c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;

d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or

2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if

1 he otherwise comes within the definition in this subsection;

2 (2) "Broker-dealer" means any person engaged in the business of effecting transactions
3 in securities for the account of others or for his own account. "Broker-dealer" does
4 not include:

5 (a) An agent, issuer, bank, savings institution, or trust company;

6 (b) A person that effects transactions in this state exclusively in securities
7 exempted by KRS 292.400(15); or

8 (c) A person who has no place of business in this state:

9 1. If he effects transactions in this state exclusively with or through the
10 issuers of the securities involved in the transactions, other broker-
11 dealers, or banks, savings institutions, trust companies, insurance
12 companies, investment companies as defined in the Investment
13 Company Act of 1940, pension or profit-sharing trusts, or other financial
14 institutions or institutional buyers, whether acting for themselves or as
15 trustees; or

16 2. If during any period of twelve (12) consecutive months he does not
17 direct more than fifteen (15) offers to sell or to buy into this state in any
18 manner to persons other than those specified in this paragraph;

19 (3) "Certified" means, when used in regard to financial statements, examined and
20 reported upon in accordance with generally accepted auditing standards with an
21 opinion expressed by a certified public accountant;

22 (4) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
23 of the Department~~[Office]~~ of Financial Institutions or any individual employee of
24 the Department~~[Office]~~ of Financial Institutions expressly designated by order of
25 the commissioner~~[executive director]~~ to act in the commissioner's~~[executive~~
26 ~~director's]~~ place;

27 (5) "Covered advisor" means any person who is registered under Section 203 of the

1 Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;

2 (6) "Covered security" means any security that is a covered security under Section 18(b)
3 of the Securities Act of 1933 or rules or regulations promulgated thereunder;

4 (7) "Department"~~["Office"]~~ means the Department~~["Office"]~~ of Financial Institutions of
5 the Commonwealth of Kentucky;

6 (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;

7 (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

8 (10) "Investment adviser" means any person who, for compensation, engages in the
9 business of advising others, either directly or through publications or writings, as to
10 the value of securities or as to the advisability of investing in, purchasing, or selling
11 securities, or who, for compensation and as a part of a regular business, issues or
12 promulgates analyses or reports concerning securities. "Investment adviser" does
13 not include:

14 (a) A bank, savings institution, or trust company;

15 (b) A lawyer, accountant, engineer, or teacher whose performance of these
16 services is solely incidental to the practice of his profession;

17 (c) A broker-dealer whose performance of these services is solely incidental to
18 the conduct of his business as a broker-dealer and who receives no special
19 compensation for them;

20 (d) A publisher of any bona fide newspaper, news magazine, or business or
21 financial publication of general, regular, and paid circulation;

22 (e) A person whose advice, analyses, or reports relate only to securities exempted
23 by KRS 292.400(1);

24 (f) A person who has no place of business in this state if:

- 25 1. His only clients in this state are other investment advisers, covered
26 advisers, broker-dealers, banks, savings institutions, trust companies,
27 insurance companies, pension or profit-sharing trusts, or other financial

1 institutions or institutional buyers, whether acting for themselves or as
 2 trustees; or

3 2. During any period of twelve (12) consecutive months he does not have
 4 more than five (5) clients other than those specified in subparagraph 1;

5 (g) An investment adviser representative or a person excluded from the definition
 6 of investment adviser representative;

7 (h) A person who is excluded from the definition of investment adviser under
 8 Section 202(a)(11) of the Investment Advisors Act of 1940;

9 (i) A covered adviser; or

10 (j) Such other persons not within the intent of this subsection as the
 11 commissioner~~[executive director]~~ may by rule or order designate;

12 (11) "Investment adviser representative" means:

13 (a) With respect to any investment adviser registered or required to be registered
 14 under this chapter, any partner, officer, director of, or a person occupying a
 15 similar status or performing similar functions, or other individual employed by
 16 or associated with an investment adviser, except clerical or ministerial
 17 personnel, who:

18 1. Makes any recommendations or otherwise renders advice regarding
 19 securities;

20 2. Manages accounts or portfolios of clients;

21 3. Determines which recommendation or advice regarding securities
 22 should be given;

23 4. Solicits, offers, or negotiates for the sale of or sells investment advisory
 24 services; or

25 5. Supervises employees who perform any of the functions described in
 26 this paragraph; and

27 (b) With respect to any covered adviser, any person defined as an investment

1 adviser representative who has a place of business located in Kentucky, as
2 those terms are defined in Rule 203A-3 promulgated in accordance with the
3 Investment Advisors Act of 1940.

4 (12) "Issuer" means any person who issues or proposes to issue any security, except that
5 with respect to certificates of deposit, voting trust certificates, or collateral-trust
6 certificates, or with respect to certificates of interest or shares in an unincorporated
7 investment trust not having a board of directors (or persons performing similar
8 functions) or of the fixed, restricted management, or unit type, the term "issuer"
9 means the person or persons performing the acts and assuming the duties of
10 depositor or manager pursuant to the provisions of the trust or other agreement or
11 instrument under which the security is issued, and except that with respect to
12 fractional undivided interests in oil, gas, or other mineral rights, the term "issuer"
13 means the owner of any such right or of an interest in such right (whether whole or
14 fractional) who creates fractional interests therein for the purpose of distribution;

15 (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

16 (14) "Person" means an individual, a limited liability company, a corporation, a
17 partnership, a limited partnership, an association, a joint-stock company, a trust
18 where the interests of the beneficiaries are evidenced by a security, an
19 unincorporated organization, a government, or a political subdivision of a
20 government;

21 (15) "Rule" or "regulation" means either or both administrative rules or administrative
22 regulations promulgated by any governmental or other regulatory or self-regulatory
23 entity, as the context requires;

24 (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of,
25 a security or interest in a security for value. "Offer" or "offer to sell" includes every
26 attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest
27 in a security for value. Any security given or delivered with, or as a bonus on

1 account of, any purchase of securities or any other thing is considered to constitute
 2 part of the subject of the purchase and to have been offered and sold for value. A
 3 purported gift of assessable stock is considered to involve an offer and sale. Every
 4 sale or offer of a warrant or right to purchase or subscribe to another security of the
 5 same or another issuer, as well as every sale or offer, of a security which gives the
 6 holder a present or future right or privilege to convert into another security of the
 7 same or another issuer, is considered to include an offer of the other security;

8 (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility
 9 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the
 10 federal statutes of those names as amended before or after January 1, 1961;

11 (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of
 12 indebtedness, certificate of interest or participation in any profit-sharing agreement,
 13 collateral-trust certificate, preorganization certificate or subscription, transferable
 14 share, investment contract, life settlement investment, voting-trust certificate,
 15 certificate of deposit for a security, fractional undivided interest in oil, gas, or other
 16 mineral rights; or, in general, any interest or instrument commonly known as a
 17 "security," or any certificate of interest in or participation in, temporary or interim
 18 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
 19 purchase, any of the foregoing. "Security" does not include any insurance or
 20 endowment policy or annuity contract under which an insurance company promises
 21 to pay a fixed number of dollars either in a lump sum or periodically for life or
 22 some other specified period;

23 (19) "State" means any state, territory, or possession of the United States, as well as the
 24 District of Columbia and Puerto Rico;

25 (20) "Life settlement investment" means the contractual right to receive any portion of
 26 the death benefit or ownership of a life insurance policy or certificate, for
 27 consideration that is less than the expected death benefit of the life insurance policy

1 or certificate. "Life settlement investment" does not include:

2 (a) Any transaction between an owner and a life settlement provider as defined by
3 KRS 304.15-020 and 304.15-700 to 304.15-720;

4 (b) Any transfer of ownership or beneficial interest in a life insurance policy from
5 a life settlement provider to another life settlement provider as defined by
6 KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed
7 solely for the purpose of holding ownership or beneficial interest in a life
8 insurance policy or policies;

9 (c) The bona fide assignment of a life insurance policy to a bank, savings bank,
10 savings and loan association, credit union, or other licensed lending institution
11 as collateral for a loan; or

12 (d) The exercise of accelerated benefits pursuant to the terms of a life insurance
13 policy issued in accordance with Subtitle 15 of KRS Chapter 304; and

14 (21) Nothing in this section shall be construed to affect the classification of property for
15 ad valorem tax purposes.

16 ➔Section 859. KRS 292.320 is amended to read as follows:

17 (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any
18 security, directly or indirectly:

19 (a) To employ any device, scheme, or artifice to defraud;

20 (b) To make any untrue statement of a material fact or to omit to state a material
21 fact necessary in order to make the statements made, in the light of the
22 circumstances under which they are made, not misleading; or

23 (c) To engage in any act, practice, or course of business which operates or would
24 operate as a fraud or deceit upon any person.

25 (2) It is unlawful for any person who receives any consideration from another person
26 primarily for advising the other person as to the value of securities or their purchase
27 or sale, whether through the issuance of analyses or reports or otherwise:

- 1 (a) To employ any device, scheme, or artifice to defraud the other person; or
- 2 (b) To engage in any act, practice, or course of business which operates or would
- 3 operate as a fraud or deceit upon the other person.
- 4 (3) It is unlawful for any investment adviser to enter into, extend, or renew any
- 5 investment advisory contract unless it provides in writing:
- 6 (a) That the investment adviser shall not be compensated on the basis of a share
- 7 of capital gains upon or capital appreciation of the funds or any portion of the
- 8 funds of the client unless the client is an "accredited investor," as defined by
- 9 Rule 501 of the Securities Act of 1933;
- 10 (b) That no assignment of the contract may be made by the investment adviser
- 11 without the consent of the other party to the contract; and
- 12 (c) That the investment adviser, if a partnership, shall notify the other party to the
- 13 contract of any change in the membership of the partnership within a
- 14 reasonable time after the change.
- 15 (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment
- 16 advisory contract which provides for compensation based upon the total value of a
- 17 fund averaged over a definite period, or as of definite dates or taken as of a definite
- 18 date. "Assignment", as used in paragraph (b) of subsection (3) of this section
- 19 includes any direct or indirect transfer or hypothecation of an investment advisory
- 20 contract by the assignor or of a controlling block of the assignor's outstanding
- 21 voting securities by a security holder of the assignor; but, if the investment adviser
- 22 is a partnership, no assignment of an investment advisory contract is considered to
- 23 result from the death or withdrawal of a minority of the members of the investment
- 24 adviser having only a minority interest in the business of the investment adviser, or
- 25 from the admission to the investment adviser of one (1) or more members who,
- 26 after admission, will be only a minority of the members and will have only a
- 27 minority interest in the business.

(5) Subsection (3)(a) of this section shall also not apply to a contract with any person or class of persons that the commissioner~~[executive director]~~ by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this section. The commissioner~~[executive director]~~ may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the commissioner~~[executive director]~~ determines are consistent with this section.

→Section 860. KRS 292.325 is amended to read as follows:

(1) Except as otherwise provided in this section, the commissioner~~[executive director]~~ may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, radio, television, or other advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as a part of an exemption offering required to be filed under KRS 292.415.

(2) The provisions of this section shall not require a covered adviser to file with the commissioner~~[executive director]~~ any documents listed in subsection (1) of this section or any document, except a prospectus, relating to a covered security.

→Section 861. KRS 292.327 is amended to read as follows:

(1) The commissioner~~[executive director]~~ may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such covered security in this state, all documents that are part of a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933

1 or a notice form adopted by the commissioner~~executive director~~ in lieu
 2 thereof, together with a consent to service of process signed by the issuer and
 3 with payment of a filing fee as follows:

- 4 1. Five hundred dollars (\$500) for an investment company, other than a
 5 unit investment trust, that is registered or that has filed a registration
 6 statement, under the Investment Company Act of 1940; or
- 7 2. Three hundred dollars (\$300) for a unit investment trust that is registered
 8 or that has filed a registration statement under the Investment Company
 9 Act of 1940; and

10 (b) After the initial offer of such covered security in this state, all documents that
 11 are part of an amendment to a current federal registration statement filed with
 12 the United States Securities and Exchange Commission under the Securities
 13 Act of 1933, or a notice form adopted by the commissioner~~executive~~
 14 ~~director~~ in lieu thereof, which shall be filed concurrently with the
 15 commissioner~~executive director~~;

16 (c) Except for a notice filing by a unit investment trust, which shall be effective
 17 indefinitely, all notice filings for such covered securities are effective for a
 18 period of one (1) year upon receipt by the commissioner~~executive director~~
 19 of a properly completed filing, including the correct fee, unless another date is
 20 requested by the issuer. An annual filing shall be required of an open-end
 21 investment company that continuously offers or sells its securities in this state,
 22 which filing shall consist of the documents specified in paragraph (a) of this
 23 subsection, exclusive of the consent to service of process, and a filing fee in
 24 the amount of five hundred dollars (\$500). The annual renewal filing shall be
 25 effective upon the expiration of the prior filing period if it is properly
 26 completed, including the correct fee, and is received by the
 27 commissioner~~executive director~~ on or before the expiration date;

- 1 (d) Amendments to a notice filing are effective upon receipt by the
 2 commissioner~~[executive director]~~. Termination of a notice filing is effective
 3 upon receipt by the commissioner~~[executive director]~~ of notice of the
 4 termination; and
- 5 (e) Notwithstanding the provisions of paragraphs (a) to (d) of this subsection, for
 6 the period ended October 10, 1999, the commissioner~~[executive director]~~ may
 7 require the registration of a covered security issued by any issuer for which a
 8 fee has not been properly paid and the improper payment has not been
 9 remedied within ten (10) business days following receipt of written
 10 notification from the commissioner~~[executive director]~~ to the issuer of the
 11 nonpayment or underpayment of the fee, as required by this chapter.
- 12 (2) The commissioner~~[executive director]~~ shall require the filing of, with respect to any
 13 security that is a covered security under Section 18(b)(4)(D) of the Securities Act of
 14 1933, a notice on SEC Form D, a two hundred fifty dollar (\$250) filing fee, and a
 15 consent to service of process signed by the issuer no later than fifteen (15) days after
 16 the first sale of such covered security in this state.
- 17 (3) The commissioner~~[executive director]~~ may require the filing of any document filed
 18 with the United States Securities and Exchange Commission under the Securities
 19 Act of 1933 with respect to a covered security under Section 18(b)(3) or (4) of the
 20 Securities Act of 1933, together with a filing fee in the amount of two hundred fifty
 21 dollars (\$250).
- 22 (4) The commissioner~~[executive director]~~ may issue a stop order suspending the offer
 23 and sale of a covered security, except a covered security under Section 18(b)(1) of
 24 the Securities Act of 1933, upon finding that:
- 25 (a) The order is necessary or appropriate in the public interest or for the
 26 protection of investors; and
- 27 (b) There is a failure to comply with any condition established under this section.

1 (5) The commissioner~~[executive director]~~ may waive any or all of the provisions of this
 2 section upon finding that they are not necessary or appropriate in the public interest
 3 or for the protection of investors.

4 ➔Section 862. KRS 292.330 is amended to read as follows:

5 (1) It is unlawful for any person to transact business in this state as a broker-dealer or
 6 agent, unless the person is registered under this chapter. It is unlawful for any
 7 broker-dealer or issuer to employ an agent unless the agent is registered. It is
 8 unlawful for any investment adviser that is required to be registered under this
 9 chapter to employ an investment adviser representative unless the investment
 10 adviser representative is registered under this chapter. It is unlawful for any person
 11 to transact business in this state as an investment adviser unless:

- 12 (a) The person is so registered under this chapter;
- 13 (b) The person is registered as a broker-dealer under this chapter; or
- 14 (c) The person is approved, and remains approved, by the Kentucky Economic
 15 Development Finance Authority as an investment fund manager pursuant to
 16 KRS 154.20-256.

17 (2) It is unlawful for any covered adviser to transact business in this state unless:

- 18 (a) The person has made a notice filing with the commissioner~~[executive~~
 19 ~~director]~~ consisting of a copy of those documents that have been filed by the
 20 covered adviser with the United States Securities and Exchange Commission
 21 and that the commissioner~~[executive director]~~ by rule or order requires to be
 22 filed together with consent to service of process and the fee prescribed in
 23 subsection (11)(b) of this section;
- 24 (b) The person is registered as a broker-dealer under this chapter;
- 25 (c) The person's only clients are investment companies as defined in the
 26 Investment Company Act of 1940, or insurance companies; or
- 27 (d) The person is excluded from the definition of investment adviser under KRS

1 292.310(10)(a) to (h) and (j).

2 It is unlawful for an investment adviser representative to be employed by a covered
3 adviser who is required to make a notice filing with the commissioner~~executive~~
4 ~~director~~ unless the investment adviser representative is registered under this
5 chapter.

6 (3) A broker-dealer, agent, investment adviser, or investment adviser representative
7 may apply for registration by filing with the commissioner~~executive director~~ or
8 the commissioner's~~executive director's~~ designee an application together with a
9 consent to service of process pursuant to KRS 292.430 and payment of the fee
10 prescribed in subsection (11).

11 (a) Registration of a broker-dealer automatically constitutes registration of any
12 agent who is a partner, officer, or director, or a person occupying a similar
13 status or performing similar functions (except any partner, officer, or director
14 or other such person whose registration as an agent is denied, suspended, or
15 revoked under subsection (13)) without the filing of applications for
16 registration as agents or the payment of fees for registration as agents.

17 (b) Except for any partner, officer, director, or other person whose registration as
18 an investment adviser representative is denied, suspended, or revoked under
19 subsection (13) of this section, registration of an investment adviser
20 automatically constitutes registration of any investment adviser representative
21 who is a partner, officer, director, or a person occupying a similar status or
22 performing similar functions, without the filing of applications for registration
23 as investment adviser representatives or the payment of fees for registration,
24 as investment adviser representatives.

25 (c) The registration application shall contain whatever information the
26 commissioner~~executive director~~ requires concerning such matters as:

27 1. The applicant's form and place of organization;

- 1 2. The applicant's proposed method of doing business;
- 2 3. The qualifications and business history of the applicant and in the case
- 3 of a broker-dealer or investment adviser, any partner, officer, or director,
- 4 any person occupying a similar status or performing similar functions, or
- 5 any person directly or indirectly controlling the broker-dealer or
- 6 investment adviser; and in the case of an investment adviser, the
- 7 qualifications and business history of an employee;
- 8 4. Any injunction or administrative order or conviction of a misdemeanor
- 9 involving a security or any aspect of the securities business and any
- 10 conviction of a felony; and
- 11 5. The applicant's financial condition and history.
- 12 (4) If no denial order is in effect and no proceeding is pending under subsection (13),
- 13 registration becomes effective at noon of the thirtieth day after an application is
- 14 filed, except as otherwise noted in this subsection:
- 15 (a) The commissioner~~executive director~~ may specify an earlier effective date
- 16 and may by order defer the effective date until noon of the thirtieth day after
- 17 the filing of any amendment.
- 18 (b) The commissioner~~executive director~~ may by rule establish a procedure for
- 19 transfer of an agent or an investment adviser representative whereby
- 20 registration may become effective prior to the filing of an application; but any
- 21 registration so transferred shall not be effective for more than thirty (30) days,
- 22 unless within that thirty (30) days a properly completed application is filed.
- 23 (c) The thirtieth day effective day is tolled if, before 5 p.m. eastern time~~[EST]~~ of
- 24 the thirtieth day, the commissioner~~executive director~~ notifies the applicant
- 25 that the application is incomplete or that he intends to deny the application,
- 26 pending the completion of the application or a hearing and final order on the
- 27 intent to deny the application or the waiver of a hearing through the failure to

1 request a hearing with fifteen (15) days of receiving notice of the intent to
2 deny the application, as applicable.

3 (5) The commissioner~~executive director~~ may require as a condition of registration
4 that the applicant (and, in the case of a corporation or partnership, the officers,
5 directors, or partners) pass a written examination as evidence of knowledge of the
6 securities business.

7 (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and
8 Section 222 of the Investment Advisers Act of 1940, the commissioner~~executive~~
9 ~~director~~ may by rule require the existence and maintenance of a minimum liquid
10 net capital for registered broker-dealers and investment advisers and a minimum
11 ratio between net capital and aggregate indebtedness, or both.

12 (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and
13 Section 222 of the Investment Advisers Act of 1940, the commissioner~~executive~~
14 ~~director~~ may by rule require registered broker-dealers, agents, and investment
15 advisers to post surety bonds in an amount up to \$25,000, and may determine their
16 conditions, except under this subsection that no such bond may be required of any
17 registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or
18 securities shall be accepted in lieu of any required surety bond. Every surety bond
19 shall provide for suit thereon by any person who has a cause of action under KRS
20 292.480, and every such bond shall provide that no suit may be maintained to
21 enforce any liability on the bond unless brought within three (3) years after the later
22 of the sale or other act upon which it is based or the discovery of the sale or act.

23 (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the
24 commissioner~~executive director~~ may by rule require registered broker-dealers to
25 carry fidelity bonds, covering its agents, general partners, and officers, in such form,
26 covering such risks, and in such amounts (not exceeding \$250,000) as he deems
27 necessary for the protection of the public; and he may by rule require registered

broker-dealers to furnish satisfactory evidence that they have such bonds.

(9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the commissioner~~executive director~~ by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The commissioner~~executive director~~ may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.

(a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the commissioner~~executive director~~ or the commissioner's~~executive director's~~ designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the commissioner~~executive director~~ or the commissioner's~~executive director's~~ designee.

(b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the commissioner~~executive director~~ or the commissioner's~~executive director's~~ designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the commissioner~~executive director~~ or the commissioner's~~executive director's~~ designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the commissioner~~executive director~~ or the commissioner's~~executive director's~~

1 designee.

2 (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser
 3 representative may be renewed by filing with the commissioner~~[executive director]~~
 4 or the commissioner's~~[executive director's]~~ designee prior to the expiration thereof
 5 an application containing the information the commissioner~~[executive director]~~
 6 may require to indicate any material change in the information contained in the
 7 original application or any renewal application for registration as a broker-dealer,
 8 agent, investment adviser, or investment adviser representative filed with the
 9 commissioner~~[executive director]~~ or the commissioner's~~[executive director's]~~
 10 designee by the applicant, payment of the prescribed fee and, in the case of a
 11 broker-dealer, a financial statement showing the financial condition of such broker-
 12 dealer as of a date within ninety (90) days. A notice filing by a covered adviser may
 13 be renewed by filing with the commissioner~~[executive director]~~ or the
 14 commissioner's~~[executive director's]~~ designee a notice filing consisting of any
 15 documents filed with the United States Securities and Exchange Commission as the
 16 commissioner~~[executive director]~~ may require by rule or order. A registered broker-
 17 dealer or investment adviser may file an application for registration of a successor
 18 and a covered adviser may file a notice filing for a successor, whether or not the
 19 successor is then in existence, for the unexpired portion of the year without payment
 20 of any fee.

21 (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars
 22 (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment
 23 adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment
 24 adviser representative, and fifty dollars (\$50) for transfer of an agent or
 25 investment adviser representative, none of which fees shall be refundable.

26 (b) The fee for notice filings shall be one hundred dollars (\$100) for a covered
 27 adviser.

- 1 (12) (a) Every registered broker-dealer, firm employing issuer agents, and investment
 2 adviser shall make and keep all accounts, correspondence, memoranda,
 3 papers, books, and other records which the commissioner~~executive director~~
 4 by rule prescribes. All records required shall be preserved for three (3) years
 5 unless the commissioner~~executive director~~ by rule prescribes otherwise for
 6 particular types of records. All required records shall be kept within this state
 7 or shall, at the request of the commissioner~~executive director~~, be made
 8 available at any time for examination by him either in the principal office of
 9 the registrant or by production of exact copies thereof in this state. If a broker-
 10 dealer is registered with the United States Securities and Exchange
 11 Commission, the books and records required by this section are limited to
 12 those that the Securities Act of 1934 requires the broker-dealer to maintain. If
 13 an investment adviser has his principal place of business in another state, the
 14 requirements of this section shall be limited to those books and records
 15 requirements of that state, provided the adviser is registered in that state and in
 16 compliance with its recordkeeping requirements.
- 17 (b) Every registered broker-dealer and investment adviser shall file such reports
 18 as the commissioner~~executive director~~ by rule prescribes. If a broker-dealer
 19 is registered with the United States Securities and Exchange Commission, the
 20 reports required by this section are limited to those required under the
 21 Securities Act of 1934. If an investment adviser has his principal place of
 22 business in another state, the requirements of this section shall be limited to
 23 the reporting requirements of that state, provided the adviser is registered in
 24 that state and in compliance with its reporting requirements.
- 25 (c) If the information contained in any document filed with the
 26 commissioner~~executive director~~ or the commissioner's~~executive director's~~
 27 designee is or becomes inaccurate or incomplete in any material respect, the

1 broker-dealer or investment adviser, as applicable, shall promptly file a
 2 correcting amendment. In the case of a covered adviser, the adviser shall file
 3 only copies of those documents required to be filed with the Securities and
 4 Exchange Commission.

5 (d) The commissioner~~executive director~~ may make periodic examinations,
 6 within or without this state, of each broker-dealer, firm employing issuer
 7 agents, and investment adviser at such times and in such scope as he
 8 determines. These examinations may be made without prior notice to the
 9 broker-dealer, firm employing issuer agents, or investment adviser. The
 10 expense reasonably attributable to any such examination shall be paid by the
 11 broker-dealer, firm employing issuer agents, or investment adviser whose
 12 business is examined but the expense so payable shall not exceed an amount
 13 which the commissioner~~executive director~~ by rule prescribes. For the
 14 purpose of avoiding unnecessary duplication of examinations, the
 15 commissioner~~executive director~~, insofar as he deems it practicable in
 16 administering this subsection, may cooperate with securities administrators of
 17 other states, the securities and exchange commission, and any national
 18 securities exchange or national securities association registered under the
 19 Securities Exchange Act of 1934.

20 (e) The commissioner~~executive director~~ may by rule prohibit unreasonable
 21 charges, profits, commissions, or other compensation of broker-dealers and
 22 investment advisers.

23 (f) The commissioner~~executive director~~ may prescribe rules for the conduct of
 24 business by broker-dealers and investment advisers which he finds appropriate
 25 in the public interest and for the protection of investors.

26 (g) The commissioner~~executive director~~ may enter into an arrangement,
 27 agreement, or other working relationship with federal, other state, and self-

1 regulatory authorities whereby documents may be filed and maintained in a
 2 central depository system with the National Association of Securities Dealers
 3 or other agencies or authorities. It is the intent of this paragraph that the
 4 commissioner~~[executive director]~~ be provided power to reduce duplication of
 5 filings, reduce administrative costs, and establish uniform procedures, forms,
 6 and administration with the states and federal authorities. The
 7 commissioner~~[executive director]~~ may permit initial and renewal registration
 8 filings required under this chapter to be filed with the Securities and Exchange
 9 Commission, the National Association of Securities Dealers, or other similar
 10 authorities. The commissioner~~[executive director]~~ may accept uniform
 11 securities examinations or other procedures designed to implement a uniform
 12 national securities regulatory system or facilitate common practices and
 13 procedures among the states.

14 (13) (a) The commissioner~~[executive director]~~ may by order deny, suspend, or revoke
 15 registration of any broker-dealer, agent, investment adviser, or investment
 16 adviser representative, or bar or censure any registrant or any officer, director,
 17 partner, or person occupying a similar status or performing similar functions
 18 for a registrant, from employment with a registered broker-dealer or
 19 investment adviser, or restrict or limit a registrant as to any function or
 20 activity of the business for which registration is required in the
 21 Commonwealth of Kentucky, if he finds that the order is in the public interest
 22 and that the applicant or registrant or, in the case of a broker-dealer, or
 23 investment adviser, any partner, officer, or director, any person occupying a
 24 similar status or performing similar functions, or any person directly or
 25 indirectly controlling the broker-dealer or investment adviser:

1. 26 Has filed an application for registration under this section which, as of
 27 its effective date, or as of any date after filing in the case of an order

1 denying effectiveness, was incomplete in any material respect or
 2 contained any statement which was, in the light of the circumstances
 3 under which it was made, false or misleading with respect to any
 4 material fact;

5 2. Has willfully violated or willfully failed to comply with any provision of
 6 this chapter or a predecessor law or any rule or order under this chapter
 7 or a predecessor law;

8 3. Has been convicted, within the past ten (10) years, of any misdemeanor
 9 involving a security or any aspect of the securities business, or any
 10 felony, or has pending against him any such criminal charge;

11 4. Is permanently or temporarily enjoined by any court of competent
 12 jurisdiction from engaging in or continuing any conduct or practice
 13 involving any aspect of the securities business;

14 5. Is the subject of an order of the commissioner~~{executive-director}~~
 15 denying, suspending, or revoking registration as a broker-dealer, agent,
 16 investment adviser, or investment adviser representative;

17 6. Is the subject of any of the following orders that are currently effective
 18 and were issued within the last five (5) years:

19 a. An order by the securities agency or administrator of another state
 20 or Canadian province or territory, or by the Securities and
 21 Exchange Commission, entered after notice and opportunity for
 22 hearing, denying, suspending, limiting or revoking the person's
 23 license as a broker-dealer, sales representative, or investment
 24 adviser, or the substantial equivalent of those terms;

25 b. An order of a self-regulatory organization finding a violation of
 26 federal law or a rule of the self-regulatory organization;

27 c. A United States Postal Service fraud order;

- 1 d. A cease and desist or other administrative order entered after
- 2 notice and opportunity for hearing by the commissioner~~[executive~~
- 3 ~~director]~~, the securities agency or administrator of another state, or
- 4 a Canadian province or territory, the Securities and Exchange
- 5 Commission, or the Commodity Futures Trading Commission; or
- 6 e. An order by the Commodity Futures Trading Commission
- 7 denying, suspending, or revoking registration under the
- 8 Commodity Exchange Act;
- 9 7. Has engaged in dishonest or unethical practices in the securities
- 10 business;
- 11 8. Is insolvent, either in the sense that his liabilities exceed his assets or in
- 12 the sense that he cannot meet his obligations as they mature; but the
- 13 commissioner~~[executive director]~~ may not enter an order against a
- 14 broker-dealer or investment adviser under this paragraph without a
- 15 finding of insolvency as to the broker-dealer or investment adviser;
- 16 9. Is not qualified on the basis of such factors as training, experience, or
- 17 knowledge of the securities business, except as provided in paragraph
- 18 (b) below; or the commissioner~~[executive director]~~ may by order, deny,
- 19 suspend, or revoke any registration if he finds that the order is in the
- 20 public interest and that the applicant or registrant:
- 21 a. Has failed reasonably to supervise his agents if he is a broker-
- 22 dealer or his employees or investment adviser representatives if he
- 23 is an investment adviser; or
- 24 b. Has failed to pay the proper filing fee; but the
- 25 commissioner~~[executive director]~~ may enter only a denial order
- 26 under this clause, and he shall vacate any such order when the
- 27 deficiency has been corrected; or

10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The commissioner~~[executive director]~~ may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.

(b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:

1. The commissioner~~[executive director]~~ may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
2. The commissioner~~[executive director]~~ may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
3. The commissioner~~[executive director]~~ may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified

- 1 by training or knowledge or both;
- 2 4. The commissioner~~[executive director]~~ shall consider that an agent who
- 3 will work under the supervision of a registered broker-dealer need not
- 4 have the same qualifications as a broker-dealer;
- 5 5. The commissioner~~[executive director]~~ shall consider that an investment
- 6 adviser is not necessarily qualified solely on the basis of experience as a
- 7 broker-dealer or agent. When he finds that an applicant for initial or
- 8 renewal registration as a broker-dealer is not qualified as an investment
- 9 adviser or an investment adviser representative, he may by order
- 10 condition the applicant's registration as a broker-dealer upon his not
- 11 transacting business in this state as an investment adviser or an
- 12 investment adviser representative;
- 13 6. The commissioner~~[executive director]~~ may by rule provide for an
- 14 examination, which may be written or oral or both, to be taken by any
- 15 class of or all applicants, as well as investment adviser representatives
- 16 and persons who represent or will represent an investment adviser in
- 17 doing any of the acts which make him an investment adviser.
- 18 (c) The commissioner~~[executive director]~~ may by order summarily postpone an
- 19 application for registration or suspend a registration pending final
- 20 determination of any proceeding under this section. A summary suspension of
- 21 an existing registration shall only be made based upon a finding by the
- 22 commissioner~~[executive director]~~ that such action is in the public interest and
- 23 that there is substantial evidence of a violation of law that constitutes an
- 24 immediate danger to the public. KRS 13B.125 shall apply to the entry of a
- 25 summary suspension of a registration. An appeal of a summary suspension
- 26 shall address only the necessity of a summary action and shall not constitute
- 27 an appeal of the merits of the underlying violation of the law. Upon the entry

1 of the order, the commissioner~~[executive-director]~~ shall promptly notify the
 2 applicant or registrant, as well as the employer or prospective employer if the
 3 applicant or registrant is an agent, that it has been entered and of the reasons
 4 therefor and that within fifteen (15) days after the receipt of a written request
 5 the matter will be set down for hearing. If no hearing is requested and none is
 6 ordered by the commissioner~~[executive-director]~~, the order will remain in
 7 effect until it is modified or vacated by the commissioner~~[executive-director]~~.
 8 If a hearing is requested or ordered, the commissioner~~[executive-director]~~,
 9 after notice of and opportunity for hearing, may modify or vacate the order or
 10 extend it until final determination.

11 (d) If the commissioner~~[executive-director]~~ finds that any registrant or applicant
 12 for registration is no longer in existence or has ceased to do business as a
 13 broker-dealer, agent, investment adviser, or investment adviser representative,
 14 or is subject to an adjudication of mental disability or to the control of a
 15 conservator or guardian, or cannot be located after reasonable search, the
 16 commissioner~~[executive-director]~~ may by order cancel the registration or
 17 application.

18 (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or
 19 investment adviser representative becomes effective thirty (30) days after
 20 receipt of an application to withdraw or within such shorter period of time as
 21 the commissioner~~[executive-director]~~ may determine, unless a revocation or
 22 suspension proceeding is pending when the application is filed or a
 23 proceeding to revoke or suspend or to impose conditions upon the withdrawal
 24 is instituted within thirty (30) days after the application is filed. If a
 25 proceeding is pending or instituted, withdrawal becomes effective at such time
 26 and upon such conditions as the commissioner~~[executive-director]~~ by order
 27 determines. If no proceeding is pending or instituted and withdrawal

1 automatically becomes effective, the commissioner~~[executive-director]~~ may
 2 nevertheless institute a revocation or suspension proceeding under
 3 subparagraph 2. of paragraph (a) of this subsection within one (1) year after
 4 withdrawal became effective and enter a revocation or suspension order as of
 5 the last date on which registration was effective. A notice filing may be
 6 withdrawn or terminated by providing notice of the withdrawal or termination,
 7 as the case may be, to the commissioner~~[executive-director]~~; the withdrawal
 8 or termination is effective upon receipt by the commissioner~~[executive~~
 9 ~~director]~~ of the notice.

10 (f) No order may be entered under any part of this section except the first
 11 sentence of paragraph (c) of this subsection without appropriate prior notice to
 12 the applicant or registrant (as well as the employer or prospective employer if
 13 the applicant or registrant is an agent or representative), opportunity for
 14 hearing, and written findings of fact and conclusions of law.

15 (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment
 16 adviser or investment adviser representative, or transaction or class of transactions
 17 by such persons, for which the commissioner~~[executive-director]~~ expressly by rule
 18 or order finds that registration is not necessary or appropriate in the public interest
 19 or for the protection of investors shall be exempt from registration under this
 20 section. The commissioner~~[executive-director]~~ may require that persons exempted
 21 from registration under this provision file such forms and information for notice
 22 purposes and be bound by one (1) or several provisions of this section as the
 23 commissioner~~[executive-director]~~ deems necessary and appropriate in the public
 24 interest or for the protection of investors and the commissioner~~[executive-director]~~
 25 may impose filing fees in connection therewith, provided however, that the amount
 26 of the fee shall not exceed the fee which would be due in the event the exempt
 27 person were required to obtain registration.

1 ➔Section 863. KRS 292.350 is amended to read as follows:

2 (1) The following securities may be registered by notification, whether or not they are
3 also eligible for registration by coordination under KRS 292.360:

4 (a) Any security whose issuer and any predecessors have been in continuous
5 operation for at least five (5) years if:

6 1. There has been no default during the current fiscal year or within the
7 three (3) preceding fiscal years in the payment of principal, interest, or
8 dividends on any security of the issuer (or any predecessor) with a fixed
9 maturity or a fixed interest or dividend provision; and

10 2. The issuer and any predecessors during the past three (3) fiscal years
11 have had average net earnings, determined in accordance with generally
12 accepted accounting practices, which are applicable to all securities
13 without a fixed maturity or a fixed interest or dividend provision and
14 which equal at least five percent (5%) of the amount of securities
15 without a fixed maturity or a fixed interest or dividend provision
16 outstanding at the date the registration statement is filed (as measured by
17 the maximum offering price or the market price on a day selected by the
18 registrant within thirty (30) days before the date of filing the registration
19 statement, whichever is higher, or if there is neither a readily
20 determinable market price nor an offering price, book value on a day
21 selected by the registrant within ninety (90) days of the date of filing the
22 registration statement), or if the issuer and any predecessors have not
23 had any securities without a fixed maturity or a fixed interest or dividend
24 provision outstanding for three (3) full fiscal years, equal at least five
25 percent (5%) of the amount (as measured by the maximum public
26 offering price) of such securities which will be outstanding if all the
27 securities being offered or proposed to be offered (whether or not they

1 are proposed to be registered or offered in this state) are issued;

2 (b) Any security registered for nonissuer distribution if any security of the same
 3 class has ever been registered under this chapter or a predecessor law, or the
 4 security being registered was originally issued pursuant to an exemption under
 5 this chapter or a predecessor law or, if previously publicly offered and sold,
 6 was not offered and sold within this state.

7 (2) A registration statement under this section shall contain the following information
 8 and be accompanied by the following documents, in addition to payment of the
 9 registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a
 10 consent to service of process meeting the requirements of that section:

11 (a) A statement demonstrating eligibility for registration by notification;

12 (b) With respect to the issuer: its name, address, and form of organization; the
 13 state (or foreign jurisdiction) and the date of its organization; and the general
 14 character and location of its business;

15 (c) With respect to any person on whose behalf any part of the offering is to be
 16 made, if such person is an officer, director, partner, or any person occupying a
 17 similar status or performing similar functions, or any person directly or
 18 indirectly controlling the issuer, his name and address; the amount of
 19 securities held by him as of the date of the filing of the registration statement;
 20 and a statement of his reasons for making the offering;

21 (d) A description of the securities being registered;

22 (e) Total amount of securities to be offered and amount of securities to be offered
 23 in this state;

24 (f) The price at which the securities are to be offered for sale to the public, if
 25 other than at the market price thereof; any known variation therefrom at which
 26 any portion of the offering is to be made to any persons, other than as
 27 underwriting and selling discounts or commissions; and the estimated

- 1 maximum aggregate underwriting and selling discounts or commissions and
 2 finders' fees (including cash, securities, or anything else of value, if any);
- 3 (g) Names and addresses of the managing underwriters, if any, and a description
 4 of the plan of distribution, if any, of any securities which are to be offered
 5 otherwise than through an underwriter;
- 6 (h) Description of any security options outstanding or to be created in connection
 7 with the offering;
- 8 (i) Any adverse order, judgment, or decree previously entered in connection with
 9 the securities being registered by any court or securities and exchange
 10 commission;
- 11 (j) A copy of any offering circular or prospectus, if any, intended, or ordered by
 12 the commissioner~~executive director~~, to be used in connection with the
 13 offering;
- 14 (k) In the case of any registration under paragraph (b) of subsection (1) which
 15 does not also satisfy the conditions of paragraph (a) of subsection (1), a
 16 certified balance sheet of the issuer as of its last fiscal year ended and a
 17 balance sheet of the issuer as of a date within four (4) months prior to the
 18 filing of the registration statement and a statement of income for each of the
 19 two (2) fiscal years preceding the date of the certified balance sheet, the last of
 20 which is to be certified, and for any period between the close of the last fiscal
 21 year and the date of the last balance sheet or for the period of the issuer's and
 22 any predecessor's existence if less than two (2) years; and
- 23 (l) Such additional information as the commissioner~~executive director~~ may by
 24 rule or order require.
- 25 (3) If no stop order is in effect and no proceeding is pending under KRS 292.390, a
 26 registration statement under this section automatically becomes effective at three
 27 o'clock eastern standard time in the afternoon (3:00 p.m.) of the fifth full business

1 day after the filing of the registration statement or the last amendment, or at such
 2 earlier time as the commissioner~~executive director~~ determines.

3 ➔Section 864. KRS 292.360 is amended to read as follows:

4 (1) Any security for which a registration statement under the Securities Act of 1933 or
 5 an offering statement under Regulation A of the Securities Act of 1933 has been
 6 filed with the Securities and Exchange Commission in connection with the same
 7 offering may be registered by coordination.

8 (2) A registration statement under this section shall contain the following information
 9 and be accompanied by the following documents, in addition to payment of the
 10 registration fee prescribed in KRS 292.380, and, if required under KRS 292.430, a
 11 consent to service of process meeting the requirements of that section:

12 (a) One (1) copy of the latest form of prospectus or offering circular filed under
 13 the Securities Act of 1933 or Regulation A promulgated under that Act
 14 together with all amendments thereto;

15 (b) The amount of securities to be offered in this state;

16 (c) The states in which a registration statement or similar document in connection
 17 with the offering has been or is expected to be filed;

18 (d) Any adverse order, judgment, or decree previously entered in connection with
 19 the offering by any court or the Securities and Exchange Commission;

20 (e) If the commissioner~~executive director~~ by rule or otherwise requires, a copy
 21 of the articles of incorporation and bylaws (or their substantial equivalents) of
 22 the issuer currently in effect, a copy of any agreements with or among
 23 underwriters, a copy of any indenture or other instrument governing the
 24 issuance of the security to be registered, and a specimen or copy of the
 25 security;

26 (f) If the commissioner~~executive director~~ requests, any other information, or
 27 copies of any other documents, filed under the Securities Act of 1933 or

- 1 Regulation A promulgated under that Act; and
- 2 (g) An undertaking to forward promptly to the commissioner~~executive director~~
- 3 all amendments to the federal registration statement or offering statement,
- 4 other than an amendment which merely delays the effective date.
- 5 (3) A registration statement under this section automatically becomes effective with the
- 6 commissioner~~executive director~~ at the moment the federal registration statement
- 7 or offering statement becomes effective or is qualified, if all the following
- 8 conditions are satisfied:
- 9 (a) No stop order is in effect and no proceeding is pending under KRS 292.390;
- 10 (b) The registration statement has been on file with the commissioner~~executive~~
- 11 ~~director~~ for at least ten (10) days; and
- 12 (c) A statement of the maximum and minimum proposed offering prices and the
- 13 maximum underwriting discounts and commissions has been on file for two
- 14 (2) full business days or such shorter period as the commissioner~~executive~~
- 15 ~~director~~ permits by rule or otherwise and the offering is made within those
- 16 limitations. The registrant shall promptly notify the commissioner~~executive~~
- 17 ~~director~~ by telephone, telegram, or other electronic means of the date and
- 18 time when the federal registration statement or offering statement became
- 19 effective or was qualified and the content of the price amendment, if any, and
- 20 shall promptly file a post-effective amendment, containing the information
- 21 and documents in the price amendment. "Price amendment" means the final
- 22 federal amendment which includes a statement of the offering price,
- 23 underwriting and selling discounts or commissions, amount of proceeds,
- 24 conversion rates, call prices, and other matters dependent upon the offering
- 25 price.
- 26 (4) Upon failure to receive the required notification and post-effective amendment with
- 27 respect to the price amendment, the commissioner~~executive director~~ may enter a

1 stop order, without notice or hearing, retroactively denying effectiveness to the
2 registration statement or suspending its effectiveness until compliance with
3 subsection (3) of this section, if he promptly notifies the registrant by telephone or
4 telegram (and promptly confirms by letter or telegram when he notifies by
5 telephone) of the issuance of the order. If the registrant proves compliance with the
6 requirements of subsection (3) of this section as to notice and post-effective
7 amendment, the stop order is void as of the time of its entry. The
8 commissioner~~[executive director]~~ may by rule or otherwise waive either or both of
9 the conditions specified in paragraphs (b) and (c) of subsection (3) of this section. If
10 the federal registration statement or offering statement becomes effective or is
11 qualified before all these conditions are satisfied and they are not waived, the
12 registration statement automatically becomes effective with the
13 commissioner~~[executive director]~~ as soon as all the conditions are satisfied. If the
14 registrant advises the commissioner~~[executive director]~~ of the date when the federal
15 registration statement or offering statement is expected to become effective or to be
16 qualified, the commissioner~~[executive director]~~ shall promptly advise the registrant
17 by telephone, telegram, or other electronic means, at the registrant's expense,
18 whether all the conditions are satisfied and whether he then contemplates the
19 institution of a proceeding under KRS 292.390; but this advice by the
20 commissioner~~[executive director]~~ does not preclude the institution of such a
21 proceeding at any time.

- 22 (5) Notwithstanding subsection (3) of this section, a registration statement under the
23 Securities Act of 1933 that becomes effective immediately upon filing with the
24 Securities and Exchange Commission shall become effective under this section
25 automatically at the time the registration statement, in the form filed with the
26 Securities and Exchange Commission, is properly filed, along with the appropriate
27 fee, with the commissioner~~[executive director]~~.

1 ➔Section 865. KRS 292.370 is amended to read as follows:

2 (1) Any security may be registered by qualification.

3 (2) A registration statement under this section shall contain the following information
4 and be accompanied by the following documents, in addition to payment of the
5 registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a
6 consent to service of process meeting the requirements of that section:

7 (a) With respect to the issuer and any significant subsidiary: its name, address,
8 and form of organization; the state or foreign jurisdiction and date of its
9 organization; the general character and location of its business; a description
10 of its physical properties and equipment; and a statement of the general
11 competitive conditions in the industry or business in which it is or will be
12 engaged;

13 (b) With respect to every director and officer of the issuer, or person occupying a
14 similar status or performing similar functions: his name, address, and
15 principal occupation for the past five (5) years; the amount of securities of the
16 issuer held by him as of a specified date within ninety (90) days of the filing
17 of the registration statement; the amount of the securities covered by the
18 registration statement to which he has indicated his intention to subscribe; and
19 a description of any material interest in any material transaction with the
20 issuer or any subsidiary effected within the past three (3) years or proposed to
21 be effected by him or any of his associates as defined in the rules promulgated
22 under the Securities Exchange Act of 1934;

23 (c) With respect to persons covered in paragraph (b): the remuneration paid to all
24 such persons in the aggregate during the past twelve (12) months, and
25 estimated to be paid during the next twelve (12) months, directly or indirectly,
26 by the issuer (together with all predecessors, parents, and subsidiaries), and
27 the amount paid and to be paid to each of those who received or are to receive

1 more than fifteen thousand dollars (\$15,000);

2 (d) With respect to any person not named in paragraph (b), owning of record, or
3 beneficially, if known, ten percent (10%) or more of the outstanding shares of
4 any class of equity security of the issuer: the information specified in
5 paragraphs (b) and (c) other than his occupation;

6 (e) With respect to every promoter, not named in paragraphs (b) and (d), if the
7 issuer was organized within the past three (3) years: the information specified
8 in paragraphs (b) and (c), any amount paid to him by the issuer within that
9 period or intended to be paid to him, and the consideration for any such
10 payment;

11 (f) The capitalization and long-term debt (on both a current and pro forma basis)
12 of the issuer and any significant subsidiary, including a description of each
13 security outstanding or being registered or otherwise offered, and a statement
14 of the amount and kind of consideration (whether in the form of cash, physical
15 assets, services, patents, good will, or anything else) for which the issuer or
16 any subsidiary has issued any of its securities within the past two (2) years or
17 is obligated to issue any of its securities;

18 (g) The kind and amount of securities to be offered; the amount to be offered in
19 this state; the proposed offering price or the method by which it is to be
20 computed; and any variation therefrom at which any portion of the offering is
21 to be made to any persons or class of persons, other than the underwriters,
22 with a specification of such person or class; the basis upon which the offering
23 is to be made if otherwise than for cash; the estimated aggregate underwriting
24 and selling discounts or commissions and finders' fees (including separately,
25 cash, securities, contracts, or anything else of value to accrue to the
26 underwriters or finders in connection with the offering); the estimated
27 amounts of other selling expenses, including legal, engineering, and

1 accounting charges; the name and address of every underwriter and every
2 recipient of a finder's fee; a copy of any underwriting or selling-group
3 agreement pursuant to which the distribution is to be made, or the proposed
4 form of any such agreement whose terms have not yet been determined; and a
5 description of the plan of distribution of any securities which are to be offered
6 otherwise than through an underwriter;

7 (h) The estimated cash proceeds to be received by the issuer from the offering; the
8 purposes for which the proceeds are to be used by the issuer; the amount to be
9 used for each purpose; the order or priority in which the proceeds will be used
10 for the purposes stated; the amounts of any funds to be raised from other
11 sources to achieve the purposes stated, and the sources of any such funds; and,
12 if any part of the proceeds is to be used to acquire any property (including
13 good will) otherwise than in the ordinary course of business, the names and
14 addresses of the vendors, the purchase price, the cost basis or book value of
15 the assets in the hands of the vendors (if they are officers, directors, partners,
16 or controlling shareholders of the issuer), the names of any persons who have
17 received commissions in connection with the acquisition and the amounts of
18 any such commissions and any other expenses in connection with the
19 acquisition (including the cost of borrowing money to finance the acquisition);

20 (i) A description of any stock options or other security options outstanding, or to
21 be created in connection with the offering, together with the amount of any
22 such options held or to be held by every person required to be named in
23 paragraph (b), (c), (d), (e), (g), or (h) and by any person who holds or will hold
24 ten percent (10%) or more in the aggregate of any such options;

25 (j) The dates of, parties to, and general effect, concisely stated, of every
26 management, employment, or other material contract made or to be made
27 otherwise than in the ordinary course of business if it is to be performed in

1 whole or in part at or after the filing of the registration statement or was made
 2 within the past two (2) years, together with a copy of every such contract; and
 3 a description of any pending litigation or proceeding to which the issuer or
 4 any of its significant subsidiaries is a party and which may materially affect its
 5 business or assets (including any such litigation or proceeding known to be
 6 contemplated by governmental authorities);

7 (k) The states in which a registration statement or similar document in connection
 8 with the offering has been or is expected to be filed;

9 (l) Any adverse order, judgment, or decree previously entered in connection with
 10 the offering by any court or the Securities and Exchange Commission;

11 (m) A copy of any prospectus or circular intended as of the effective date to be
 12 used in connection with the offering;

13 (n) A specimen or copy of the security being registered; a copy of the issuer's
 14 articles of incorporation and bylaws, as currently in effect; and a copy of any
 15 indenture or other instrument covering the security to be registered;

16 (o) A signed or conformed copy of an opinion of counsel, as to the legality of the
 17 security being registered (with an English translation if it is in a foreign
 18 language), which shall state, in addition to such matters as the
 19 commissioner~~executive director~~ may request whether the security when sold
 20 will be legally issued, fully paid, and nonassessable, and, if a debt security, a
 21 binding obligation of the issuer, and whether or not the offering, as
 22 contemplated in the registration statement will comply with the requirements
 23 of any claimed exemption from the registration provisions of the Securities
 24 Act of 1933;

25 (p) Financial statements of the issuer that meet the following requirements:

- 26 1. If the maximum proceeds to be received from the offering do not exceed
 27 two million dollars (\$2,000,000), a balance sheet as of the end of the

1 most recent fiscal year and, if the date of the most recent fiscal year end
2 is more than four (4) months prior to the date of filing, a balance sheet as
3 of a date within four (4) months prior to the filing of the registration
4 statement; and statements of income for the last fiscal year preceding the
5 date of the most recent balance sheet filed and for the period, if any,
6 between the close of such fiscal year and the date of the most recent
7 balance sheet filed. The balance sheet and income statement for the most
8 recent fiscal year shall be audited if the financial statements have
9 previously been audited for other purposes. Otherwise, all financial
10 statements may be unaudited;

11 2. If the maximum proceeds to be received from the offering do not exceed
12 five million dollars (\$5,000,000), a balance sheet as of the end of the
13 most recent fiscal year and, if the date of the most recent fiscal year end
14 is more than four (4) months prior to the date of filing, a balance sheet as
15 of a date within four (4) months prior to the filing of the registration
16 statement; and statements of income, cash flows, and changes in
17 stockholders equity for each of the two (2) fiscal years preceding the
18 date of the most recent balance sheet filed and for the period, if any,
19 between the close of the most recent of the fiscal years and the date of
20 the most recent balance sheet filed. The balance sheet and statements of
21 income, cash flows, and changes in stockholders equity for the most
22 recent fiscal year shall be audited; all other financial statements may be
23 unaudited;

24 3. If the maximum proceeds to be received from the offering exceed five
25 million dollars (\$5,000,000), a balance sheet as of the end of the most
26 recent fiscal year and, if the date of the most recent fiscal year end is
27 more than four (4) months prior to the date of filing, a balance sheet as

1 of a date within four (4) months prior to the filing of the registration
2 statement; and statements of income, cash flows, and changes in
3 stockholders equity for each of the three (3) fiscal years preceding the
4 date of the most recent balance sheet filed and for the period, if any,
5 between the close of the most recent of the fiscal years and the date of
6 the most recent balance sheet filed. The balance sheet and statements of
7 income, cash flows, and changes in stockholders equity for the most
8 recent fiscal year shall be audited; all other financial statements may be
9 unaudited;

10 4. Notwithstanding the provisions of this paragraph, if the issuer has been
11 in existence for less than one (1) fiscal year, the balance sheet shall be as
12 of a date not more than four (4) months prior to the date of filing of the
13 registration statement, and the statements of income, cash flows, and
14 changes in stockholders equity shall be for the period from inception
15 through the date of the balance sheet filed;

16 5. If any part of the proceeds of the offering is to be applied to the purchase
17 of any business whose annual sales or revenues for its most recent fiscal
18 year are in excess of twenty percent (20%) of the issuer's sales or
19 revenues for its most recent fiscal year or involves the acquisition of
20 assets in excess of twenty percent (20%) of the issuer's assets as of its
21 most recent fiscal year end, except as specifically exempted by the
22 commissioner~~executive director~~, the same financial statements which
23 would be required if that business were the issuer shall be filed;

24 6. The commissioner~~executive director~~, where necessary or appropriate
25 in the public interest or for the protection of investors, may permit the
26 omission of one (1) or more of the financial statements or the
27 substitution of appropriate statements of comparable character, and may

1 waive the requirement that the financial statements be audited; and

2 7. The financial statements required by this subsection shall be prepared as
3 to form and content in accordance with generally accepted accounting
4 principles;

5 (q) The written consent of an accountant, engineer, appraiser, or other person
6 whose profession gives authority to a statement made by him, if the person is
7 named as having prepared or certified a report or valuation (other than a
8 public and official document or statement) which is used in connection with
9 the registration statement; and

10 (r) Such additional information as the commissioner~~executive director~~ requires
11 by rule or order.

12 ➔Section 866. KRS 292.380 is amended to read as follows:

13 (1) Except as otherwise expressly provided in this chapter, a registration statement
14 under this chapter becomes effective when the commissioner~~executive director~~ so
15 orders. The commissioner~~executive director~~ may require as a condition of
16 registration under this chapter that a prospectus containing any designated part of
17 the appropriate information specified in this chapter be sent or given to each person
18 to whom an offer is made before or concurrently with:

19 (a) The first written offer made to him (otherwise than by means of a public
20 advertisement) by or for the account of the issuer or any other person on
21 whose behalf the offering is being made, or by any underwriter or broker-
22 dealer who is offering part of an unsold allotment or subscription taken by
23 him as a participant in the distribution;

24 (b) The confirmation of any sale made by or for the account of any such person;

25 (c) Payment pursuant to any such sale; or

26 (d) Delivery of the security pursuant to any such sale, whichever first occurs; but
27 the commissioner~~executive director~~ shall accept for use under any such

1 requirement a current prospectus or offering circular regarding the same
2 securities filed under the Securities Act of 1933 or regulations thereunder.

3 (2) A registration statement may be filed by the issuer, any other person on whose
4 behalf the offering is to be made, or a registered broker-dealer. Any document filed
5 under this chapter or a predecessor law within five (5) years preceding the filing of a
6 registration statement may be incorporated by reference in the registration statement
7 to the extent that the document is currently accurate. The commissioner~~executive~~
8 ~~director~~ may by rule or otherwise permit the omission of any item of information or
9 document from any registration statement.

10 (3) The commissioner~~executive director~~ may require as a condition of registration by
11 qualification or coordination that (a) the proceeds from the sale of the registered
12 security be impounded until the issuer receives a specified amount or (b) any
13 security issued within the past three (3) years, or to be issued, to a promoter for a
14 consideration substantially different from the public offering price, or to any person
15 for a consideration other than cash, be delivered in escrow. The
16 commissioner~~executive director~~ may by rule or order determine the conditions of
17 any escrow or impounding required hereunder. The commissioner~~executive~~
18 ~~director~~ shall not reject a depository solely because of location in another state. All
19 securities delivered in escrow to the commissioner~~executive director~~ or some
20 other depository satisfactory to him prior to January 1, 1968, which have not
21 previously been released shall be released from escrow and all securities delivered
22 in escrow to the commissioner~~executive director~~ or some other depository
23 satisfactory to him subsequent to January 1, 1968 which have not previously been
24 released shall be released from escrow no later than ten (10) years after the date of
25 delivery into escrow.

26 (4) The commissioner~~executive director~~ may also require as a condition of
27 registration by qualification that the issuer undertake to keep the securities

1 registered under this chapter for a period of up to five (5) years or until the
 2 securities become exempt securities under KRS 292.400 or become covered
 3 securities, and that the issuer forward to its security holders audited annual financial
 4 statements during the period for which the shares are registered. The
 5 commissioner~~executive director~~ may by rule or order impose other undertakings.

6 (5) For the registration of securities by notification, coordination, or qualification, there
 7 shall be paid to the commissioner~~executive director~~ an examination fee of one
 8 hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one
 9 percent (0.06%) of the aggregate offering price of the securities which are to be
 10 offered in this state, but the registration fee shall in no case be less than sixty dollars
 11 (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination
 12 fee and the registration fee shall be payable in separate checks. When a registration
 13 statement is withdrawn before the effective date or a pre-effective stop order is
 14 entered under KRS 292.390, the commissioner~~executive director~~ shall retain the
 15 examination fee. For a registration by notification for market-making purposes only
 16 the examination fee need be paid.

17 (6) When securities are registered by notification or by coordination or by qualification,
 18 they may be offered and sold by the issuer, any other person on whose behalf they
 19 are registered or by any registered broker-dealer. Every registration statement is
 20 effective for one (1) year from its effective date, or any longer period during which
 21 the security is being offered or distributed in a nonexempted transaction by or for
 22 the account of the issuer or other person on whose behalf the offering is being made
 23 or by any underwriter or broker-dealer who is still offering part of an unsold
 24 allotment or subscription taken by him as a participant in the distribution, except
 25 during the time a stop order is in effect under KRS 292.390. All outstanding
 26 securities of the same class as a registered security are considered to be registered
 27 for the purpose of any nonissuer transaction:

- 1 (a) So long as the registration statement is effective; and
- 2 (b) Between the thirtieth day after the entry of any stop order suspending or
- 3 revoking the effectiveness of the registration statement under KRS 292.390 (if
- 4 the registration statement did not relate in whole or in part to a nonissuer
- 5 distribution) and one (1) year from its effective date if any securities of the
- 6 same class are outstanding.

7 A registration statement may be withdrawn otherwise only in the discretion of the

8 commissioner~~director~~.

9 ➔Section 867. KRS 292.390 is amended to read as follows:

- 10 (1) The commissioner~~executive director~~ may issue a stop order denying effectiveness
- 11 to, or suspending or revoking the effectiveness of, any registration statement if he
- 12 finds that the order is in the public interest and that:

- 13 (a) The registration statement as of its effective date or as of any earlier date in
- 14 the case of an order denying effectiveness, or any amendment under KRS
- 15 292.380(5) as of its effective date, is incomplete in any material respect or
- 16 contains any statement which was, in the light of the circumstances under
- 17 which it was made, false or misleading with respect to any material fact;

- 18 (b) Any provision of this chapter or any rule, order, or condition lawfully imposed
- 19 under this chapter has been willfully violated, in connection with the offering
- 20 by:

- 21 1. The person filing the registration statement;
- 22 2. The issuer, any partner, officer, or director of the issuer, any person
- 23 occupying a similar status or performing similar functions, or any person
- 24 directly or indirectly controlling or controlled by the issuer, but only if
- 25 the person filing the registration statement is directly or indirectly
- 26 controlled by or acting for the issuer; or
- 27 3. Any underwriter;

1 (c) The security registered or sought to be registered is the subject of an
 2 administrative stop order or a similar order or a permanent or temporary
 3 injunction of any court of competent jurisdiction entered under any other
 4 federal or state act applicable to the offering; but:

5 1. The commissioner~~[executive director]~~ may not institute a proceeding
 6 against an effective registration statement under this paragraph more
 7 than one (1) year from the date of the order or injunction relied on; and

8 2. He may not enter an order under this paragraph on the basis of an
 9 injunction entered under any other state act unless that order or
 10 injunction was based on facts which would currently constitute a ground
 11 for a stop order under this section;

12 (d) The issuer's enterprise or method of business includes or would include
 13 activities which are illegal where performed;

14 (e) The offering has worked or tended to work a fraud upon purchasers or would
 15 so operate;

16 (f) The offering has been, or would be, made with unreasonable amounts of
 17 underwriters' and sellers' discounts, commissions, or other compensations, or
 18 promoters' profits or participation, or unreasonable amounts or kinds of
 19 options;

20 (g) When a security is sought to be registered by notification it is not eligible for
 21 such registration;

22 (h) When a security is sought to be registered by coordination, there has been a
 23 failure to comply with the undertaking required by KRS 292.360(2)(g);

24 (i) The applicant or registrant has failed to pay the proper registration fee; but the
 25 commissioner~~[executive director]~~ may enter only a denial order under this
 26 paragraph and he shall vacate any such order when the deficiency has been
 27 corrected;

1 (j) Commissions, compensation, and selling and other transaction expenses
2 greater than twenty percent (20%) in the aggregate, or such other amount
3 specified in the guidelines adopted by the North American Securities
4 Administrators Association, would be paid directly or indirectly, in
5 consideration for the sale of securities sought to be registered.

6 (2) The commissioner~~[executive director]~~ may not enter a stop order against an
7 effective registration statement on the basis of a fact or transaction known to him
8 when the registration statement became effective unless the proceeding is instituted
9 within the next thirty (30) days.

10 (3) The commissioner~~[executive director]~~ may by order summarily postpone or
11 suspend the effectiveness of the registration statement pending final determination
12 of any proceeding under this section. Upon the entry of a stop order under any part
13 of this section, the commissioner~~[executive director]~~ shall promptly notify the
14 issuer of the securities, the applicant or registrant, and the person on whose behalf
15 the securities are to be or have been offered that the order has been entered and of
16 the reasons therefor and that within fifteen (15) days after the receipt of a written
17 request the matter will be set down for hearing. If no hearing is requested within
18 fifteen (15) days and none is ordered by the commissioner~~[executive director]~~, the
19 commissioner~~[executive director]~~ shall enter his written findings of fact and
20 conclusions of law and the order will remain in effect until it is modified or vacated
21 by the commissioner~~[executive director]~~. If a hearing is requested or ordered, the
22 commissioner~~[executive director]~~, after notice of and opportunity for hearing to the
23 issuer and to the applicant or registrant, shall enter his written finding of fact and
24 conclusions of law and may modify or vacate the order. The
25 commissioner~~[executive director]~~ may modify or vacate a stop order if he finds that
26 the conditions which prompted its entry have changed or that it is otherwise in the
27 public interest to do so.

1 ➔Section 868. KRS 292.400 is amended to read as follows:

2 KRS 292.340 to 292.390 shall not apply to any of the following:

- 3 (1) Any security, including a revenue obligation, issued or guaranteed by the United
4 States, any state, any political subdivision of a state, or any agency or corporate or
5 other instrumentality of one (1) or more of the foregoing; or any certificate of
6 deposit for any of the foregoing;
- 7 (2) Any security issued or guaranteed by Canada, any Canadian province, any political
8 subdivision of any such province, any agency or corporate or other instrumentality
9 of one (1) or more of the foregoing, or any other foreign government with which the
10 United States currently maintains diplomatic relations, if the security is recognized
11 as a valid obligation by the issuer or guarantor;
- 12 (3) Any security issued by and representing an interest in or a debt of, or guaranteed by,
13 any bank organized under the laws of the United States, or any bank, savings
14 institutions, or trust company organized and supervised under the laws of any state;
- 15 (4) Any security issued by and representing an interest in or a debt of, or guaranteed by,
16 any federal savings and loan association, or any building and loan or similar
17 association organized under the laws of any state and authorized to do business in
18 this state;
- 19 (5) Securities issued by corporations formed under KRS Chapter 279;
- 20 (6) Any security issued or guaranteed by any federal credit union or any credit union;
- 21 (7) Any security issued or guaranteed by any common carrier, public utility, or holding
22 company which is:
 - 23 (a) A registered holding company under the Public Utility Holding Company Act
24 of 1935 or a subsidiary of such a company within the meaning of that act;
 - 25 (b) Regulated in respect of its rates and charges by a governmental authority of
26 the United States or any state or municipality; or
 - 27 (c) Regulated in respect of the issuance or guarantee of the security by a

- 1 governmental authority of the United States, any state, Canada, or any
 2 Canadian province;
- 3 (8) Any security listed or approved for listing upon notice of issuance on the New York
 4 Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, the
 5 Pacific Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board
 6 Options Exchange, or any other stock exchange approved by the
 7 commissioner~~executive director~~; any other security of the same issuer which is of
 8 senior or substantially equal rank; any security called for by subscription rights or
 9 warrants so listed or approved; or any warrant or right to purchase or subscribe to
 10 any of the foregoing. This exemption is available only for securities listed on Tier I
 11 of those exchanges having more than one (1) tier;
- 12 (9) Any security issued by any person organized and operated not for private profit but
 13 exclusively for religious, educational, benevolent, charitable, fraternal, social,
 14 athletic, or reformatory purposes, or as a chamber of commerce or trade or
 15 professional association;
- 16 (10) Any commercial paper which arises out of a current transaction or the proceeds of
 17 which have been or are to be used for current transactions, and which evidence an
 18 obligation to pay cash within nine (9) months of the date of issuance, exclusive of
 19 days of grace, or any renewal of the paper which is likewise limited, or any
 20 guarantee of the paper or of any renewal;
- 21 (11) Any security issued in connection with an employee stock purchase, stock option,
 22 savings, pension, profit-sharing, or similar benefit plan, including any underlying
 23 security. For those plans that do not qualify under Section 401 of the Internal
 24 Revenue Code and that provide for contribution by employees, the securities are
 25 exempt if a notice specifying the terms of the plan is filed with the
 26 commissioner~~executive director~~ before the securities are issued or before
 27 December 31, 1998, and the commissioner~~executive director~~ does not disallow

- 1 the exemption within the next five (5) business days. The commissioner~~executive~~
 2 ~~director~~ may, by rule, modify any requirement for a specific class of issuers or
 3 impose additional requirements for this exemption or waive any requirement;
- 4 (12) Securities issued by corporations formed under or which have adopted the
 5 provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they
 6 in the form of stock, book equities, letters of credit, or letters of advice issued by
 7 any agricultural cooperative association which are the result of distributable
 8 earnings or savings;
- 9 (13) Memberships and voting stock issued by cooperative corporations formed under or
 10 which have adopted the provisions of KRS 272.020 to 272.050, and patronage
 11 refunds issued by cooperative corporations which are the result of distributable
 12 earnings or savings;
- 13 (14) Any security for which the commissioner~~executive director~~ expressly by rule or
 14 order finds that registration is not necessary or appropriate in the public interest or
 15 for the protection of investors; or
- 16 (15) Any security issued by and representing an interest in or a debt of, or guaranteed by,
 17 any insurance company organized under the laws of any state and authorized to do
 18 business in this state.
- 19 ➔Section 869. KRS 292.410 is amended to read as follows:
- 20 (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the
 21 following transactions:
- 22 (a) Any isolated nonissuer transaction, whether effected through a broker-dealer
 23 or not;
- 24 (b) Any nonissuer distribution of an outstanding security by a registered broker-
 25 dealer, if the security has a fixed maturity or a fixed interest or dividend
 26 provision and there has been no default during the current fiscal year or within
 27 the three (3) preceding fiscal years, or during the existence of the issuer and

1 any predecessors if less than three (3) years, in the payment of principal,
 2 interest, or dividends on the security;

3 (c) Any nonissuer transaction effected by or through a registered broker-dealer
 4 pursuant to an unsolicited order or offer to buy; but the
 5 commissioner~~executive-director~~ may by rule require that the customer
 6 acknowledge upon a specified form that the sale was unsolicited, and that a
 7 signed copy of each such form be preserved by the broker-dealer for a
 8 specified period;

9 (d) Any transaction between the issuer or other person on whose behalf the
 10 offering is made and an underwriter, or among underwriters;

11 (e) Any transaction in a bond or other evidence of indebtedness secured by a real
 12 or chattel first mortgage or deed of trust, or by an agreement for the sale of
 13 real estate or chattels, if the entire mortgage, deed of trust, or agreement,
 14 together with all the bonds or other evidences of indebtedness secured
 15 thereby, is offered and sold as a unit;

16 (f) Any transaction by an executor, administrator, sheriff, marshal, receiver,
 17 trustee in bankruptcy, guardian, or conservator;

18 (g) Any transaction executed by a bona fide pledgee without any purpose of
 19 evading this chapter;

20 (h) Any offer or sale to a bank, savings institution, trust company, insurance
 21 company, investment company as defined in the Investment Company Act of
 22 1940, pension or profit-sharing trust, or other financial institution or
 23 institutional buyer, or to a broker-dealer, whether the purchaser is acting for
 24 itself or in some fiduciary capacity;

25 (i) The offer or sale of a security by the issuer of the security if all of the
 26 following conditions are met:

27 1. The issuer does not offer or sell the securities by means of a form of

1 general advertisement or general solicitation. The following shall not
2 constitute general solicitation within the meaning of this section:

- 3 a. Solicitation of indications of interest in accordance with the terms
4 and conditions as the commissioner~~[executive director]~~ may adopt
5 by rule; or
- 6 b. Offers to sell securities and the dissemination of written offering
7 materials in accordance with the terms of this section at least thirty
8 (30) days after the withdrawal of an application by the issuer to
9 register the same class of securities;

10 2. The issuer reasonably believes that each purchaser of the securities is
11 acquiring the securities for investment and is aware of any restrictions
12 imposed on transferability and resale of the securities. The basis for
13 reasonable belief may include:

- 14 a. Obtaining a written representation signed by the purchaser that the
15 purchaser is acquiring the securities for the purchaser's own
16 investment and is aware of any restrictions imposed on the
17 transferability and resale of the securities; and
- 18 b. Placement of a legend on the certificate or other document that
19 evidences the securities stating that the securities have not been
20 registered under this chapter, and setting forth or referring to the
21 restrictions on transferability and sale of the securities; and

22 3. The transaction satisfies one (1) of the following conditions:

- 23 a. Each purchaser has access to all the material facts with respect to
24 the securities by reason of the purchaser's active involvement in
25 the organization or management of the issuer or the purchaser's
26 family relationship with a person actively involved in the
27 organization or management of the issuer;

1 b. There are not more than fifteen (15) purchasers in Kentucky
2 described in subdivision a. of this subparagraph, plus an unlimited
3 number of purchasers who are "accredited investors" as defined by
4 Rule 501 of the Securities Act of 1933; or

5 c. The aggregate offering price of the securities, including securities
6 sold outside of Kentucky, does not exceed one million dollars
7 (\$1,000,000), the total number of purchasers who are not
8 accredited investors, including purchasers outside of Kentucky,
9 does not exceed thirty-five (35), and each purchaser either receives
10 all of the material facts with respect to the decision to invest in the
11 security or is an accredited investor or a purchaser described in
12 subdivision a. of this subparagraph;

13 4. Persons receiving commissions, finders fees, or other remuneration in
14 connection with sales of securities in reliance on this subsection are not
15 relieved of compliance with KRS 292.330;

16 5. The commissioner~~[executive director]~~ may by rule deny the exemption
17 provided in this subsection to a particular class of issuers or may make
18 the exemption available to the issuers upon compliance with additional
19 conditions and requirements, if appropriate in furtherance of the intent
20 of this chapter;

21 6. The commissioner~~[executive director]~~ may, by order, increase the
22 maximum number of purchasers or the maximum offering amount
23 provided in paragraph 3.c. of this subsection upon request if the
24 commissioner~~[executive director]~~ determines that any such increase is
25 necessary or appropriate in the public interest or for the protection of
26 investors. Any request to increase either or both of the conditions shall
27 be made in writing to the commissioner~~[executive director]~~ before any

1 sale in reliance on the requested increase and shall be accompanied by
2 the following:

- 3 a. A statement of the amount of the increase in the maximum
4 offering amount or in the number of purchasers being requested,
5 and the issuer's reasons for requesting the increase;
- 6 b. A copy of any offering circular or other written materials being
7 distributed to prospective purchasers;
- 8 c. A copy of the written representation and legend serving as the
9 issuer's basis for reasonable belief of a purchaser's investment
10 intent and awareness of restrictions on the transferability and resale
11 of the security being acquired; and
- 12 d. A filing fee of two hundred fifty dollars (\$250);

13 (j) Any offer or sale of a preorganization certificate or subscription, if:

- 14 1. No commission or other remuneration is paid or given directly or
15 indirectly for soliciting any prospective subscriber;
- 16 2. The number of subscribers does not exceed twenty-five (25); and
- 17 3. No payment is made by any subscriber;

18 (k) Any transaction pursuant to an offer to existing security holders of the issuer,
19 including persons who at the time of the transaction are holders of convertible
20 securities, nontransferable warrants, or transferable warrants exercisable
21 within not more than ninety (90) days of their issuance, if no commission or
22 other remuneration (other than a standby commission) is paid or given directly
23 or indirectly for soliciting any security holder in this state;

24 (l) Any offer (but not a sale) of a security for which registration statements have
25 been filed under both this chapter and the Securities Act of 1933 if no stop
26 order or refusal order is in effect and no public proceeding or examination
27 looking toward such an order is pending under either act;

- 1 (m) The issuance of any stock dividend, whether the corporation distributing the
 2 dividend is the issuer of the stock or not, if nothing of value is given by
 3 stockholders for the distribution other than the surrender of a right to a cash
 4 dividend where the stockholder can elect to take a dividend in cash or stock;
- 5 (n) Any transaction incident to a right of conversion or a statutory or judicially-
 6 approved reclassification, recapitalization, reorganization, quasi
 7 reorganization, stock split, reverse stock split, merger, consolidation, or sale
 8 of assets;
- 9 (o) Any transaction by a person who does not control, and is not controlled by or
 10 under common control with, the issuer if:
- 11 1. The transaction is at a price reasonably related to the current market
 12 price;
 - 13 2. The security is registered under Section 12 of the Securities Exchange
 14 Act of 1934 and the issuer files reports pursuant to Section 13 of that
 15 act; and
 - 16 3. Copies of such federal registration statements, reports, forms or exhibits
 17 as the commissioner~~executive director~~ may by rule or order require are
 18 filed with the commissioner~~executive director~~;
- 19 (p) Any transaction by a person who may control, or may be controlled by or
 20 under common control with, the issuer if:
- 21 1. The transaction is at a price reasonably related to the current market
 22 price;
 - 23 2. The security is registered under Section 12 of the Securities Exchange
 24 Act of 1934 and the issuer files reports pursuant to Section 13 of that
 25 act;
 - 26 3. Copies of such federal registration statements, forms, reports, or exhibits
 27 as the commissioner~~executive director~~ may by rule or order require are

1 filed with the commissioner~~[executive director]~~; and

2 4. Such sales by any such person comply with such rules as the
3 commissioner~~[executive director]~~ may prescribe; or

4 (q) Any transaction for which the commissioner~~[executive director]~~ by rule or
5 order finds that registration is not necessary or appropriate in the public
6 interest or for the protection of investors.

7 (2) The commissioner~~[executive director]~~ may by order deny or revoke the exemption
8 specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific
9 security or transaction. No such order may be entered without appropriate prior
10 notice to all interested parties, opportunity for hearing, and written findings of fact
11 and conclusions of law, except that the commissioner~~[executive director]~~ may by
12 order summarily deny or revoke any of the specified exemptions pending final
13 determination of any proceeding under this subsection. Upon entry of a summary
14 order, the commissioner~~[executive director]~~ shall promptly notify all interested
15 parties that it has been entered and of the reasons therefor and that within fifteen
16 (15) days of the receipt of a written request the matter will be set down for hearing.
17 If no hearing is requested and none is ordered by the commissioner~~[executive~~
18 ~~director]~~, the order will remain in effect until it is modified or vacated by the
19 commissioner~~[executive director]~~. If a hearing is requested or ordered, the
20 commissioner~~[executive director]~~, after notice of and opportunity for hearing to all
21 interested persons, may modify or vacate the order to extend it until final
22 determination. No order under this subsection may operate retroactively. No person
23 may be considered to have violated this chapter by reason of any offer or sale
24 effected after the entry of an order under this subsection if he sustains the burden of
25 proof that he did not know, and in the exercise of reasonable care could not have
26 known of the order. In any proceeding under this chapter, the burden of proving an
27 exemption from a definition is upon the person claiming it.

➔Section 870. KRS 292.415 is amended to read as follows:

- (1) Before any security may be issued as an exempt security under KRS 292.400(9) or (12), a claim of exemption must first be filed with the commissioner~~[executive director]~~ and the commissioner~~[executive director]~~ by order shall not have determined that the exemption is unavailable within the next ten (10) full business days. A claim of exemption filed under this section shall be in such form and contain such information as the commissioner~~[executive director]~~ by rule or order requires and each offering shall be effective for a maximum of twelve (12) consecutive months unless the commissioner~~[executive director]~~ by rule or order extends such period of time, not to exceed five (5) years.
 - (2) The issuer may make offers, but not sales, before and during the ten (10) business day period required by subsection (1) of this section, if:

 - (a) Each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and
 - (b) No enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received, directly or indirectly, from a prospective purchaser, before the termination of the ten (10) business day period and any order disallowing the exemption has been vacated.
- The commissioner~~[executive director]~~ may, by rule or order, prohibit offers by a particular class of issuers before the expiration of the ten (10) business day period required by subsection (1) of this section, or may require issuers to comply with additional conditions and requirements prior to making offers before the expiration of the period, if appropriate in furtherance of the intent of this chapter.
- (3) The commissioner~~[executive director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of an exemption, if the commissioner~~[he]~~ finds that the order is in the public interest and that any security

1 has been or is about to be offered or sold in violation of this section. If the
 2 commissioner~~[executive-director]~~ finds it appropriate in the public interest or
 3 necessary for the protection of investors, the commissioner~~[executive-director]~~ may
 4 order any issuer in violation of this section to make an offer of rescission.

5 (4) Failure by any person to file a claim of exemption under this section shall not give
 6 rise to a private right of action under KRS 292.330(1), 292.340, or 292.480 which
 7 would not otherwise be available under the provisions of this chapter.

8 (5) Any person who fails to file a claim of exemption under this section, unless he or
 9 she does so intentionally, shall not be subject to KRS 292.991.

10 ➔Section 871. KRS 292.420 is amended to read as follows:

11 (1) In any proceeding under this chapter, the burden of proving an exemption or an
 12 exception from a definition is upon the person claiming it.

13 (2) The commissioner~~[executive-director]~~ may require any person, who is selling or
 14 offering for sale or who is about to sell or offer for sale or who has sold or offered
 15 for sale any security within this state, to file a statement of the claim of exemption,
 16 if any, upon which such person is relying, and if any time, in the opinion of the
 17 commissioner~~[executive-director]~~, the information contained in such statement filed
 18 is misleading, incorrect, inadequate, or fails to establish the right of exemption, the
 19 commissioner~~[he]~~ may require such person, agent, or investment adviser to file
 20 such information as may in his opinion be necessary to establish the claimed
 21 exemption. The refusal to furnish information as required by order of the
 22 commissioner~~[executive-director]~~ pursuant to the provisions of this subsection,
 23 within a reasonable time to be fixed by the commissioner~~[executive-director]~~, shall
 24 be proper ground for the entry of an order by the commissioner~~[executive-director]~~
 25 suspending and/or canceling the registration of the broker-dealer, agent or
 26 investment adviser.

27 (3) The commissioner~~[executive-director]~~ shall have authority at all times to consider

and determine whether any proposed sale, transaction, issue, or security is entitled to an exemption or an exception from the definition accorded by this chapter, provided, however, that the commissioner~~[executive director]~~ in his *or her* discretion may decline to exercise such authority as to any proposed sale, transaction, issue, or security. Any interested party desiring the commissioner~~[executive director]~~ to exercise such authority shall submit to the commissioner~~[executive director]~~ a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which verified statement shall be accompanied by a request for a ruling as to the particular exemption or exception from definition, together with a filing fee of two hundred fifty dollars (\$250). After such notice to interested parties as the commissioner~~[executive director]~~ shall deem proper and after a hearing, if any, the commissioner~~[executive director]~~ may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption or the exception from definition as claimed. An order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter, shall be binding upon the commissioner~~[executive director]~~, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement as submitted.

➔Section 872. KRS 292.430 is amended to read as follows:

- (1) Every applicant for registration as a broker-dealer, agent, investment adviser, or investment adviser representative under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the commissioner~~[executive director]~~, in such form as the commissioner~~[he]~~ by rule prescribes, an irrevocable consent appointing the commissioner~~[executive director]~~ or the commissioner's~~[his]~~ successor in office to be the applicant's~~[his]~~ attorney to receive service of any

1 lawful process in any noncriminal suit, action, or proceeding against the
 2 applicant~~[him]~~ or the applicant's~~[his]~~ successor, executor, or administrator which
 3 arises under this chapter or any rule or order hereunder after the consent has been
 4 filed, with the same force and validity as if served personally on the person filing
 5 the consent. A person who has filed such a consent in connection with a previous
 6 registration need not file another. Service may be made by leaving a copy of the
 7 process in the office of the commissioner~~[executive director]~~, but it is not effective
 8 unless:

- 9 (a) The plaintiff, who may be the commissioner~~[executive director]~~ in a suit,
 10 action, or proceeding instituted by the commissioner~~[him]~~, forthwith sends
 11 notice of the service and a copy of the process by certified mail, return receipt
 12 requested, or by registered mail to the defendant or respondent at his or her
 13 last address on file with the commissioner~~[executive director]~~; and
 14 (b) The plaintiff's affidavit of compliance with this subsection is filed in the case
 15 on or before the return day of the process, if any, or within such further time
 16 as the court allows.

- 17 (2) Every issuer of a covered security and every covered adviser who makes a notice
 18 filing with Kentucky under this chapter shall file with the commissioner~~[executive~~
 19 ~~director]~~, in the form as prescribed by administrative regulation, an irrevocable
 20 consent appointing the commissioner~~[executive—director]~~ or the
 21 commissioner's~~[his]~~ successor in office to be his or her attorney to receive service
 22 of any lawful process in any noncriminal suit, action, or proceeding against him or
 23 her or his or her successor, executor, or administrator that arises under this chapter
 24 or under any rule or order under this chapter after the consent has been filed, with
 25 the same force and validity as if served personally on the person filing the consent.
 26 A person who has filed a consent in connection with a previous notice filing need
 27 not file another. Service may be made by leaving a copy of the process in the office

1 of the commissioner~~[executive director]~~, but it is not effective unless:

2 (a) The plaintiff, who may be the commissioner~~[executive director]~~ in a suit,
3 action, or proceeding instituted by the commissioner~~[him]~~, sends notice of the
4 service and a copy of the process by certified mail, return receipt requested, or
5 by registered mail to the defendant or respondent at his or her last address on
6 file with the commissioner~~[executive director]~~; and

7 (b) The plaintiff's affidavit of compliance with this subsection is filed in the case
8 on or before the return day of the process, if any, or within the time as the
9 court allows.

10 (3) When any person, including any nonresident of this state, engages in conduct
11 prohibited or made actionable by this chapter or any rule or order hereunder, and the
12 person~~[he]~~ has not filed a consent to service of process under subsection (1) or (2)
13 of this section and personal jurisdiction over him or her cannot otherwise be
14 obtained in this state, that conduct shall be considered equivalent to his or her
15 appointment of the commissioner~~[executive director]~~ or the commissioner's~~[his]~~
16 successor in office to be the person's~~[his]~~ attorney to receive service of any lawful
17 process in any noncriminal suit, action, or proceeding against the person~~[him]~~ or
18 the person's~~[his]~~ successor executor or administrator which grows out of that
19 conduct and which is brought under this chapter or any rule or order hereunder, with
20 the same force and validity as if served on the person~~[him]~~ personally. Service may
21 be made by leaving a copy of the process in the office of the
22 commissioner~~[executive director]~~, and it is not effective unless:

23 (a) The plaintiff, who may be the commissioner~~[executive director]~~, in a suit,
24 action, or proceeding instituted by the commissioner~~[him]~~ forthwith sends
25 notice of the service and a copy of the process by certified mail, return receipt
26 requested, or by registered mail to the defendant or respondent at his or her
27 last known address or takes other steps which are reasonably calculated to

1 give actual notice; and

2 (b) The plaintiff's affidavit of compliance with this subsection is filed in the case
3 on or before the return day of the process, if any, or within such further time
4 as the court allows.

5 ➔Section 873. KRS 292.440 is amended to read as follows:

6 It is unlawful for any person to make or cause to be made, in any document filed with the
7 commissioner~~[executive director]~~ or the commissioner's~~[executive director's]~~ designee
8 or in any proceeding under this chapter, any statement which is, at the time and in the
9 light of the circumstances under which it is made, false or misleading in any material
10 respect.

11 ➔Section 874. KRS 292.450 is amended to read as follows:

12 (1) Neither the fact that an application for registration under KRS 292.330 or a
13 registration statement under KRS 292.350, 292.360, or 292.370 has been filed, nor
14 the fact that a person or security is effectively registered, constitutes a finding by the
15 commissioner~~[executive director]~~ that any document filed under this chapter is true,
16 complete, and not misleading.

17 (2) Neither any such fact nor the fact that an exemption or exception is available for a
18 security or a transaction means that the commissioner~~[executive director]~~ has
19 passed in any way upon the merits or qualifications of, or recommended or given
20 approval to, any person, security, or transaction. It is unlawful to make, or cause to
21 be made, to any prospective purchaser, customer, or client any representation
22 inconsistent with this section.

23 (3) Neither the fact that a notice filing for a covered security or for a covered adviser
24 has been filed, nor the fact that the person, security, or transaction is registered or
25 exempt from registration, constitutes a finding by the commissioner~~[executive~~
26 ~~director]~~ that any document filed under this chapter is true, complete, and not
27 misleading or that the person, security, or transaction is entitled to claim an

1 exemption.

2 (4) It is unlawful to make or cause to be made to any prospective purchaser, customer,
3 or client any representation inconsistent with this section.

4 ➔ Section 875. KRS 292.460 is amended to read as follows:

5 (1) The commissioner~~[executive director]~~ in his or her discretion:

6 (a) May make such public or private investigations within or outside of this state
7 as he deems necessary to determine whether any registration should be
8 granted, denied, or revoked, or whether any person has violated or is about to
9 violate any provision of this chapter or any rule or order under this chapter, or
10 to aid in the enforcement of this chapter or in the prescribing of rules and
11 forms hereunder;

12 (b) May require or permit any person to file a statement in writing, under oath or
13 otherwise as the commissioner~~[executive director]~~ may determine, as to all
14 the facts and circumstances concerning the matter to be investigated; or

15 (c) May publish information concerning any violation of this chapter or any rule
16 or order hereunder.

17 (2) For the purpose of any investigation or proceeding under this chapter, the
18 commissioner~~[executive director]~~ or any officer designated by him may administer
19 oaths and affirmations, subpoena witnesses, compel their attendance, take evidence,
20 and require production of any books, papers, correspondence, memoranda,
21 agreements, or other documents or records which the commissioner~~[executive~~
22 ~~director]~~ deems relevant or material to the inquiry.

23 (3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any
24 court of competent jurisdiction, upon application by the commissioner~~[executive~~
25 ~~director]~~, may issue to that person an order requiring him to appear before the
26 commissioner~~[executive director]~~, or the officer designated by him, there to
27 produce documentary evidence if so ordered or to give evidence touching the matter

1 under investigation or in question; and any failure to obey the order of the court may
2 be punished by the court as a contempt of court.

- 3 (4) No person is excused from attending and testifying or from producing any
4 document or record before the commissioner~~[executive director]~~, or in obedience to
5 the subpoena of the commissioner~~[executive director]~~ or any officer designated by
6 him, or in any proceeding instituted by the commissioner~~[executive director]~~, on
7 the ground that the testimony or evidence (documentary or otherwise) required of
8 the person~~[him]~~ may tend to incriminate the person~~[him]~~ or subject the
9 person~~[him]~~ to a penalty or forfeiture; but no individual may be prosecuted or
10 subjected to any penalty or forfeiture for or on account of any transaction, matter, or
11 thing concerning which he is compelled, after claiming the~~[his]~~ privilege against
12 self-incrimination, to testify or produce evidence (documentary or otherwise),
13 except that the individual so testifying shall not be exempt from prosecution and
14 punishment for perjury committed in so testifying.

15 ➔Section 876. KRS 292.470 is amended to read as follows:

16 Whenever it appears to the commissioner~~[executive director]~~ that any person has
17 engaged or is about to engage in any act or practice constituting a violation of any
18 provision of this chapter or any rule or order under this chapter, the commissioner~~[he]~~
19 may in his or her discretion bring any or all of the following remedies:

- 20 (1) Issue a cease and desist order, with or without a prior hearing, appealable to
21 Franklin Circuit Court, against the person or persons engaged in the prohibited
22 activities directing that person or persons to cease and desist from illegal activity. In
23 order to issue an order without a prior hearing, the commissioner~~[executive~~
24 ~~director]~~ must find that the delay in issuing a final cease and desist order will cause
25 harm to the public;
- 26 (2) An action in the Franklin Circuit Court or any other court of competent jurisdiction
27 to enjoin any such acts or practices and to enforce compliance with this chapter or

any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

Upon a proper showing by the commissioner~~[executive director]~~, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The commissioner~~[executive director]~~ may not be required to post a bond; or

(3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:

(a) To cease and desist from the activity;

(b) To perform any other reasonable mandates directed by the commissioner~~[executive director]~~ pursuant to an appropriate remedy fashioned by the commissioner~~[executive director]~~ and reasonably calculated to carry out the provisions of this chapter; or

(c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

➔Section 877. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the commissioner~~[executive director]~~ may obtain a review of the order by filing in accordance with KRS Chapter 13B in the Franklin Circuit Court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner~~[executive director]~~, and thereupon the commissioner~~[executive director]~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these

1 have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set
 2 aside the order, in whole or in part. No objection to the order may be considered by the
 3 court unless it was urged before the commissioner~~[executive-director]~~ or there were
 4 reasonable grounds for failure to do so. The findings of the commissioner~~[executive~~
 5 ~~director]~~ as to the facts, if supported by substantial evidence, are conclusive. If either
 6 party applies to the court for leave to adduce additional evidence, and shows to the
 7 satisfaction of the court that the additional evidence is material and that there were
 8 reasonable grounds for failure to adduce the evidence in the hearing before the
 9 commissioner~~[executive-director]~~, the court may order the additional evidence to be
 10 taken before the commissioner~~[executive-director]~~ and to be adduced upon the hearing in
 11 such manner and upon such conditions as the court may consider proper. The
 12 commissioner~~[executive-director]~~ may modify his or her findings as to the facts, by
 13 reason of the additional evidence so taken; and the commissioner~~[he]~~ shall file any
 14 modified or new findings, which if supported by substantial evidence shall be conclusive,
 15 and any recommendation for the modification or setting aside of the original order. The
 16 commencement of proceedings under this section does not, unless specifically ordered by
 17 the court, operate as a stay of the commissioner's~~[executive-director's]~~ order. An appeal
 18 may be taken from the judgment of the Franklin Circuit Court on any such appeal to the
 19 Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

20 ➔Section 878. KRS 292.500 is amended to read as follows:

- 21 (1) The administration of the provisions of this chapter shall be under the
 22 Department~~[Office]~~ of Financial Institutions.
- 23 (2) It is unlawful for the commissioner~~[executive-director]~~ or any of his or her officers
 24 or employees to use for personal benefit any information which is filed with or
 25 obtained by the commissioner~~[executive-director]~~ and which is not made public.
 26 Except as provided in subsection (18) of this section, no provision of this chapter
 27 authorizes the commissioner~~[executive-director]~~ or any of the department's~~[his]~~

1 officers or employees to disclose any confidential information except among
 2 themselves or when necessary or appropriate in an administrative hearing or
 3 investigation under this chapter. No provision of this chapter either creates or
 4 derogates from any privilege which exists at common law or otherwise when
 5 documentary or other evidence is sought under a subpoena directed to the
 6 commissioner~~[executive-director]~~ or any of the department's~~[his]~~ officers or
 7 employees.

8 (3) The commissioner~~[executive-director]~~ may from time to time promulgate, amend,
 9 and repeal administrative regulations, forms, and orders as are necessary to carry
 10 out the provisions of this chapter, including administrative regulations and forms
 11 governing registration statements, applications, notice filings, and reports and
 12 defining any terms, whether or not used in this chapter, insofar as the definitions are
 13 not inconsistent with the provisions of this chapter. For the purpose of
 14 administrative regulations and forms, the commissioner~~[executive-director]~~ may
 15 classify securities, persons, and matters within his jurisdiction, and prescribe
 16 different requirements for different classes.

17 (4) No administrative regulation, form, or order may be promulgated, amended, or
 18 repealed unless the commissioner~~[executive-director]~~ finds that the action is
 19 necessary or appropriate in the public interest or for the protection of investors and
 20 consistent with the purposes fairly intended by the policy and provision of this
 21 chapter. In promulgating administrative regulations and forms, the
 22 commissioner~~[executive-director]~~ may cooperate with the securities administrators
 23 of the other states and the Securities and Exchange Commission with a view to
 24 effectuating the policy of this statute to achieve maximum uniformity in the form
 25 and content of registration statement, applications, notice filings, and reports
 26 whenever practicable.

27 (5) The commissioner~~[executive-director]~~ may by administrative regulation or order

- 1 prescribe the form and content of financial statements required under this chapter
 2 and the circumstances under which consolidated financial statements shall be
 3 certified by certified public accountants. All financial statements shall be prepared
 4 in accordance with generally-accepted accounting standards.
- 5 (6) All administrative regulations and forms of the commissioner~~[executive director]~~
 6 shall be published.
- 7 (7) No provision of this chapter imposing any liability applies to any act done or
 8 omitted in good faith in conformity with any administrative regulation, form, or
 9 order of the commissioner~~[executive director]~~, notwithstanding that the
 10 administrative regulation, form, or order may later be amended or repealed or be
 11 determined by judicial or other authority to be invalid for any reason.
- 12 (8) A document is filed when it is received by the commissioner~~[executive director]~~ or
 13 when the commissioner~~[executive director]~~ receives confirmation that a document
 14 has been filed pursuant to KRS 292.327, 292.330, 292.360, and 292.370.
- 15 (9) Every administrative hearing shall be conducted in accordance with KRS Chapter
 16 13B and the provisions of this chapter, and shall be public unless the
 17 commissioner~~[executive director]~~ in his or her discretion grants a request joined in
 18 by all the respondents that the hearing be conducted privately.
- 19 (10) The commissioner~~[executive director]~~ shall keep a register of all applications for
 20 registration and registration statements and notice filings which are or have ever
 21 been effective under this chapter and all denial, suspension, or revocation final
 22 orders which have ever been entered under this chapter. The register shall be open
 23 for public inspection.
- 24 (11) The information contained in or filed with any registration statement, application,
 25 notice filings, or report may be made available to the public under administrative
 26 regulations as the commissioner~~[executive director]~~ may promulgate.
- 27 (12) Upon request and at reasonable charges as the commissioner~~[he]~~ prescribes, the

1 commissioner~~executive director~~ shall furnish to any person photostatic or other
2 copies (certified under his seal of office if requested) of any entry in the register or
3 any document which is a matter of public record. In any administrative hearing or
4 prosecution under this chapter, any copy so certified is prima facie evidence of the
5 contents of the entry or document certified.

6 (13) The commissioner~~executive director~~ in his or her discretion may honor requests
7 from interested persons for interpretative opinions.

8 (14) The commissioner~~executive director~~ may assess civil fines against any person
9 who violates any provision of this chapter or any rule or order under this chapter.

10 (15) In addition to any fines levied under subsection (14) of this section, the
11 commissioner~~executive director~~ may also assess the costs of any investigation,
12 including attorney's fees incurred as a result of bringing enforcement actions under
13 the provisions of this chapter and costs of holding any hearing as a result of an
14 enforcement action. Costs and attorney's fees may only be assessed if there has been
15 a final determination that a violation has occurred, and in an amount reasonably
16 related to the costs of investigation and enforcement for those violations only.

17 (16) If fines or costs assessed under this section are not paid, the
18 commissioner~~executive director~~ may notify the Attorney General who shall
19 promptly institute an action in the name of the Commonwealth of Kentucky, in the
20 Franklin Circuit Court for the recovery of the fines or costs.

21 (17) The remedies provided by this section are not exclusive and may be sought and
22 employed in any combination to enforce the provisions of this chapter. The
23 remedies set forth in this section shall not prohibit or restrict the
24 commissioner~~executive director~~ from participating in any way whatsoever with
25 respect to any joint examination, investigation, enforcement action, settlement, or
26 other legal or regulatory action with securities administrators of other jurisdictions,
27 the Securities and Exchange Commission, any self-regulatory organization, or any

1 national securities exchange or national securities association registered under the
 2 Securities Exchange Act of 1934. Accordingly, the commissioner~~[executive~~
 3 ~~director]~~ may, at any time and in his or her sole discretion, share or cause to be
 4 shared by any employee of the department~~[office]~~ any information gained pursuant
 5 to an examination, investigation, filing, or from any other source, with other
 6 governmental agencies, jurisdictions, or governmental or self-regulating
 7 organizations or entities, to the extent the commissioner~~[executive director]~~, in his
 8 or her sole discretion, deems that the sharing of information is or will be reasonably
 9 necessary or useful to the department~~[office]~~ or other agency in carrying out its
 10 regulatory responsibilities.

11 (18) The following materials, documentation, and other information are deemed to have
 12 been confidentially disclosed to the department~~[office]~~ and to be confidential
 13 information under the Kentucky Open Records Act and, specifically, the provisions
 14 of KRS 61.878(1)(b), to the extent described in this subsection and except as
 15 provided further in administrative regulation:

16 (a) Any materials, documentation, or other information provided to or otherwise
 17 obtained by the department~~[office]~~ during the course of a routine compliance
 18 examination of any broker-dealer, agent, investment adviser, or investment
 19 adviser representative; and

20 (b) Any materials, documentation, or other information provided to or otherwise
 21 obtained by the department~~[office]~~ from any other regulatory or governmental
 22 body, including but not limited to any other state securities regulator, the
 23 Securities and Exchange Commission, any self-regulatory organization, any
 24 state or federal criminal agency, and any criminal prosecutorial body, and
 25 which the other body expressly deems to be confidential.

26 ➔Section 879. KRS 292.991 is amended to read as follows:

27 (1) Any person who willfully violates any provision of this chapter except KRS